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# PUBLICATIONS

OF

## The Colonial Society of Massachusetts

VOLUME XXIX

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COLLECTIONS

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Records of the Suffolk County Court  
1671-1680  
I

BOSTON

PUBLISHED BY THE SOCIETY

1933

**The University Press :**  
**JOHN WILSON AND SON, CAMBRIDGE, U. S. A.**



1160364

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OF

**The Colonial Society of Massachusetts**

APRIL 1, 1933

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RECORDS OF THE  
SUFFOLK COUNTY COURT

1671-1680

PART I





## PREFACE

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THE PUBLICATION of these judicial records has been undertaken by the Society as a contribution to the legal and social history of the American colonies. Legal development is probably the least known aspect of American colonial history. Judicial opinions were not recorded in the English colonies, no year-books were issued, and the printed materials for legal and judicial history have been so scanty as to preclude the more cautious historians from dealing with this important side of colonial life; less cautious historians have indulged in generalizations for which slight support can be found in fact.

A few years ago, on the initiative of our associate Evarts Boutelle Greene, then President of the American Historical Association, a committee of that Association was appointed on legal history, and a conference held at New York. This committee recommended that a systematic effort be made to publish the abundant manuscript records of American colonial courts. Acting on that suggestion, the Council of the Colonial Society of Massachusetts cast about for a suitable contribution that they might make to so worthy an enterprise. Their choice fell upon a manuscript book of records of the Quarterly Court of Suffolk County, Massachusetts, covering the period between October 31, 1671, and April, 1680.

This manuscript record book, measuring  $9 \times 14\frac{5}{8}$  inches, in the clear handwriting of the clerks of the court, Freegrace Bendall and Isaac Addington, is the property of the Boston Athenæum; and to the Trustees of that institution the Society is indebted for permission to publish. About one fifth of the book was set up in type some years ago by William H. Whitmore, with the intention of printing it as a Report of the Boston Record Commissioners; but for some reason unknown the enterprise was abandoned, and only a single pull of the proof, also owned by the Boston Athenæum, survived. This page proof, collated with the original manuscript, became the

basis of the first one hundred and fifty pages of our text; the rest was typewritten from the original and collated with it before printing. Our associate Charles K. Bolton, Librarian of the Boston Athenæum, has afforded us every facility for this work; and has himself aided in the collation.

Since the entries of cases in the records are extremely brief, often giving little clue to the issues at stake and never to the reasons for the decision, it seemed wise to annotate the entries from the court files. Such papers of this colonial court as survived the Revolution and ravages of time are now part of the archives of the Supreme Judicial Court of the Commonwealth of Massachusetts. Some years ago the ancient dockets were unfolded and carefully mounted in books with protection of transparent silk, under the direction of the then Clerk of the Supreme Judicial Court of the County of Suffolk, our late associate John Noble. Numerous communications from Mr. Noble, based on these files, will be found in volumes I-XI of our Publications. The present Clerk of the Supreme Judicial Court of the County of Suffolk, John F. Cronin, Esq., graciously gave us permission to search the court files for this purpose; and the search was facilitated by his able assistant, Miss Madeleine Connors.

Although no documents can be found for the great majority of cases entered in these volumes, the documents that have survived for the minority are so numerous that a rigorous selection was necessary, in order to keep publication within reasonable compass. For this purpose the system adopted by Mr. George F. Dow, in his *Records and Files of the Quarterly Courts of Essex County*, a pioneer publication in this field, has been followed, and at various stages the Committee have had the advantages of Mr. Dow's advice and guidance. The most interesting and important documents have been printed *in extenso*, in 8-point type.<sup>1</sup> Excerpts have been made from others. The rest (excepting such formal documents as writs and returns) have been mentioned by title or reference number, and in many cases have afforded material for a running commentary on the case, which is printed in 10-point type, and enclosed with the selected documents in square brackets.

In the selection of documents to be printed, the Committee have

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<sup>1</sup> It will be understood that all matter in this type is quoted.

endeavored to serve three distinct purposes. They have attempted to include everything that may throw light on the legal history of the colony. From this point of view the most important documents are the Reasons of Appeal to the Court of Assistants and the Answers to said Reasons drawn up by the other party. In the absence of all record of judicial opinions, these Reasons and Answers offer the principal clue to the reasons of decisions, and are full of significant information as to the kinds of law which the courts of the colony then took under cognizance.

The second point of view in the choice of documents has been that of social history, in its broadest sense. These court files of the colony are the best source we have of the life of the people. They include inventories of houses, estates, shops, and vessels; accounts of common doings such as eating and drinking, lovemaking and fighting; ordinary occupations such as seafaring, brewing, and tanning. The numerous sidelights on coastwise voyages to Maine, Nova Scotia, and the Southern Colonies, and on overseas trading to the West Indies, France, Spain, and England, add much to what we already know of Boston's maritime activities. Although these records cover the period of King Philip's War, which probably caused a greater drain of man power and money than any of the later colonial wars, "business as usual" appears to have prevailed in Suffolk County.

Finally, a number of documents have been printed simply because they record the common speech of the day. Depositions of witnesses, reports of conversations between litigious neighbors and combative seamen, are the nearest we can hope to come to the Yankee speech of the seventeenth century. Hence we have kept a sharp look-out for documents of that sort — the more illiterate the better; and have been amply rewarded with salty speech of the sea, idioms tart with Saxon monosyllables, coarse phrases bawled across back fences or hurled at passers-by in the twisty lanes of Boston; phrases the more biting because cursing and swearing, the lazy man's substitute for language, were forbidden. If any there be who suppose that our New England Puritans were nice in speech, prohibitionists in principle, or ascetics in practice, a careful perusal of our documents may be a wholesome corrective.

The Editor of the Society's Publications is not responsible for these volumes. They were largely edited as a sort of extra-curricular

## PREFACE

activity by the Chairman of the Publication Committee, who is to blame for that ample measure in which they fall short of the Society's high standards of scrupulous accuracy in every detail. He took the precaution of submitting the copy for all annotated cases to Professor Chafee, who rejected certain documents as unimportant and included others, corrected the Chairman's legal blunders, and amplified his notes from the point of view of legal history. Mr. Charles L. Lundin did most of the copying and collating, and acquired such experience as to be of very material assistance in the selection and annotation. Many corrections and comments have been furnished in reading proof by other members of the Publication Committee, notably by our associate Albert Matthews.

In printing both the original court book and the additional documents, we have followed the Society's standard practice of reproducing the original as accurately as the limitations of ordinary type will allow. All irregularities of spelling, capitalization, abbreviation, and punctuation have been followed, with these exceptions:

The *tilde* has been replaced by the letter it represents. Thus *peñy* is spelt *penny*, and *accōn*, *accion*.

The *l* or *li* in the abbreviation for *pounds* is not crossed, as it often is in the manuscripts.

All tailed p's, such as *p*, *p*, etc., are spelt out *per*, *pro*, etc., and superior letters in connection with such abbreviations are ignored.

Dots, colons, and other abbreviations under superior letters are not reproduced.

Freegrace Bendall, the clerk and recorder of the court at the beginning of the period covered by these volumes, had a peculiar habit of using an apostrophe after all plurals', thus, as well as for the possessive case. This intrusive apostrophe has not been reproduced.

One of the abbreviations, which can be represented accurately with the character @, has been so reproduced. It probably means *anno*, "in the year," following the date.

In recording jury decisions and entries of appeals, the clerk followed fixed formulæ. The formula of submitting the evidence to the jury is reproduced in full only in the first entry (*Sheafe v. Hawkins*, p. 1), and the formula of entering an appeal to the Court of Assistants is reproduced in full only in the record of the first case so appealed (*Clark v. Nicholls*, pp. 5-6). In all later cases, the ever-recurrent



formulæ have been omitted, and the omission indicated. In the documents copied, the often elaborate endorsements and verifications are omitted.

In the manuscript court record, the date of each session, the lists of judges and jurors, the title of each case, and the executions, are entered in the margin. In printing, these marginal glosses have been brought into the center. The marginal titles for the entries of liquor licenses have, in general, been omitted to save space.

The Index is the work of Mr. Waldo Palmer. The Society's Editor took the entire copy in charge when it was about half way through page proof, and saw it through the press.

SAMUEL ELIOT MORISON  
*For the Publication Committee*



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# INTRODUCTION

BY

ZECHARIAH CHAFEE, JR.

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## THE SUFFOLK COUNTY COURT AND ITS JURISDICTION

According to an act of the General Court of May 20, 1643, dividing the Bay Colony into four "sheires,"<sup>1</sup> Suffolk embraced the towns of Boston,<sup>2</sup> Roxbury, Dorchester, Dedham, Weymouth, Hingham, Braintree, and Nantasket (Hull). By 1670, through the subdivision of towns, it had come to include Medfield and Milton as well.<sup>3</sup> As our old school geographies would have said, Suffolk was bounded on the north by Middlesex County (from which it was divided by the Charles River),<sup>4</sup> on the north and east by the Atlantic Ocean, on the south by Plymouth Colony and Rhode Island, and on the west by the wilderness. The population of Boston in 1680, according to the estimate of W. S. Rossiter, was 4,500.<sup>5</sup> Probably the other nine towns included almost as many more. A safe estimate of the total population is between 7,000 and 10,000.

The Suffolk County Court was one of the inferior quarterly courts (as distinct from the "Greate Quarter Courts," which meant the Court of Assistants) which were established by the Great and General

---

<sup>1</sup> Massachusetts Bay Records, II. 38.

<sup>2</sup> Which then included Muddy River (Brookline), Winnisimet (Chelsea), Rumney Marsh (Revere), and what is now Winthrop.

<sup>3</sup> The Suffolk County of 1680 included the following towns and cities which were incorporated later than 1680: Bellingham, Medway, Franklin, Wrentham, Foxborough, Walpole, Sharon, Stoughton, Randolph, Canton, Quincy, Cohasset, Dover, Holbrook, Millis, Avon, Plainville, Norwood, Westwood, Wellesley, Norfolk, and Needham. The Hingham of 1680 may have included parts of present-day Abington, Norwell, and Scituate; while the Braintree of that day may have included parts of modern Brockton and Abington. (I am indebted to Albert H. Hall, Esq., for much of this information.)

<sup>4</sup> But Cambridge, in Middlesex County, included the land on the right bank of the Charles that later became Brighton and Newton.

<sup>5</sup> A Century of Population Growth (Bureau of the Census, 1909), p. 11.

Court at the session of March 3, 1635/36.<sup>1</sup> Subsequent enactments respecting this and the other county courts are printed as a revised statute in the General Laws and Liberties of the Massachusetts Colony (1672), which declares (pp. 35-36):

Also there shall be County Courts held in the several Countyes, by the Magistrates living in the respective Counties, or any other Magistrates that can attend the same, or by such Magistrates as the General Court shall appoint from time to time; together with such persons of worth, where there shall be need, as shall from time to time be appointed by the General Court (at the nomination of the Freemen of the County) to be joyned in Commission with the Magistrates, so that they may be Five in all, Three whereof may keep a Court, provided there be one Magistrate; Every of which Courts shall have full power to hear and determine all Causes, Civil and Criminal, not extending to Life, Member or Banishment, (which with Causes of divorce, are reserved to the Court of Assistants) and to make and constitute Clerks and other needfull Officers, and to Summon Juryes of Inquest, and Tryals out of the Towns of the County; Provided no Jurors shall be warned from *Salem to Ipswich*, nor from *Ipswich to Salem* and the times and places for holding the County Courts shall be as followeth

#### SUFFOLK

*Boston* the last tuesday of the second Month [April].

The last tuesday of the fifth Month [July].

The last tuesday of the eighth Month [October].

And the last tuesday of the eleventh Month [January].

These terms were not strictly observed, the autumn session being often in November.

The term "Magistrates" in this act, as in Bay Colony usage generally, meant primarily the Governor, Deputy-Governor, and twelve Assistants, annually elected by the freemen on the last Wednesday in Easter Term (the day before Ascension).<sup>2</sup> There were two other classes of magistrates, who in another act<sup>3</sup> are called "Associates":

<sup>1</sup> Massachusetts Bay Records, I. 169.

<sup>2</sup> See our Publications, xviii. 56 n<sup>1</sup>.

<sup>3</sup> William H. Whitmore, Ed., The Colonial Laws of Massachusetts, Reprinted from the Edition of 1660, with the Supplements to 1672, p. 132 (cited hereafter as Whitmore, Colonial Laws, 1660-1672); Whitmore, Ed., The Colonial Laws of Massachusetts, Reprinted from the Edition of 1672, with the Supplements through 1686, p. 21 (cited hereafter as Whitmore, Colonial Laws, 1672-1686).



magistrates by special appointment, and "persons of worth" nominated (according to an act of 1650) in town meetings, and appointed to the magistracy by the General Court.<sup>1</sup> The Suffolk Court, sitting in the colonial capital, could usually muster more than a quorum of Assistants; as may be ascertained by comparing the names of those on the Bench at the beginning of every session with the list of annually elected Assistants in W. H. Whitmore, *The Massachusetts Civil List* (1870), pp. 24-25. Besides the Suffolk Court, there were six other county courts in the Bay Colony during the period covered by these records: that of Middlesex County, meeting alternately at Charlestown and Cambridge; that of Essex County, meeting alternately at Salem and Ipswich; that of Hampshire County, meeting alternately at Springfield and Northampton; that of Norfolk County,<sup>2</sup> meeting alternately at Salisbury and Hampton; that of Pascataqua County, meeting alternately at Dover and Portsmouth (New Hampshire); and that of Yorkshire (the annexed Province of Maine), meeting at York. In 1674, the General Court organized the County of Devonshire for that part of Maine around the Kennebec River.<sup>3</sup>

Osgood has correctly summarized the jurisdiction of the County Courts as follows:<sup>4</sup>

Their criminal jurisdiction was analogous to that of quarter sessions in England, and in that capacity they performed a great variety of functions. They appointed commissioners to hear small causes, trustees of public legacies, persons to lay out highways, a master of the house of correction, searchers of money, and viewers of fish. They confirmed the nomination of military officers, apportioned charges for the repair of bridges; they licensed innkeepers, and packers of sturgeon, and punished violation of licenses; they ordered the removal of obstructions on highways, pun-

<sup>1</sup> H. L. Osgood, *American Colonies in the Seventeenth Century*, I. 190.

<sup>2</sup> Norfolk County was entirely distinct from the present Massachusetts county of that name. It was organized in 1643 for the benefit of the recently annexed towns in New Hampshire, and also included Salisbury and Haverhill (Mass. Bay Records, II. 38); Pascataqua County apparently was carved out of Norfolk when the laws were revised (Whitmore, *Colonial Laws, 1660-1672*, p. 144). New Hampshire was organized as a separate Royal Province in January, 1679/80; and on February 4, the General Court of Massachusetts Bay recognized this unwelcome fact by relinquishing the Counties of Norfolk and Pascataqua, and declaring the towns of Salisbury, Amesbury, and Haverhill annexed to Essex County (Mass. Bay Records, v. 264).

<sup>3</sup> Whitmore, *Colonial Laws, 1672-1686*, pp. 218, 221.

<sup>4</sup> Osgood, I. 190-191.

ished idle persons, punished excess of apparel, compelled restitution of overcharge by merchants, determined rates of wages in case of dispute, provided for the poor; they admitted freemen who were church members, fixed ministers' allowances, saw that they were paid, inquired into the publication of heretical doctrines, punished heretics and profaners of the Sabbath, saw that Indians were civilized and received religious instruction, did all varieties of probate business, punished those who carried on unlicensed trade with the Indians. Full provision was made for appeal to the court of assistants.

Although the County Court was the usual court of first jurisdiction, there was also a series of Commissioners' Courts in every town for causes not involving a debt or damage greater than forty shillings. A Commissioners' Court consisted of a single magistrate, or, in towns where no magistrate resided, three commissioners appointed by the General Court and sworn into office before a County Court. The Boston Commissioners' Court, by exception, consisted of seven commissioners, and had jurisdiction over cases not exceeding ten pounds. The Commissioners' Courts could not commit to prison, and in any case appeal lay from them to the Court of Assistants; and in some instances the case could be transferred to the County Court.<sup>1</sup>

Strangers who could not conveniently await a regular session of the County Court had the privilege, by an act of 1639, of requesting the summons of a special court consisting of three magistrates. The Strangers' Court could hear and try any cause, civil or criminal, triable in the County Court.<sup>2</sup>

In every town there was a clerk of the writs authorized to issue summonses to witnesses and defendants, to apply attachments, to grant replevins, and to take bonds.<sup>3</sup>

### THE APPELLATE COURTS

Immediately superior to the County Court was the Court of Assistants, consisting of the Governor, Deputy-Governor, and the

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<sup>1</sup> Osgood, *i.*, pp. 191-192; Whitmore, *Colonial Laws, 1660-1672*, pp. 132-133; Whitmore, *Colonial Laws, 1672-1686*, pp. 20-21. Several cases involving proceedings in the Commissioners' Court are indexed in this book under Commissioners' Court, e. g., *Golden v. Clements*, pp. 13-17.

<sup>2</sup> Whitmore, *Colonial Laws, 1672-1686*, pp. 37-38. See this introduction, *Conflict of Laws*.

<sup>3</sup> Whitmore, *Colonial Laws, 1672-1686*, pp. 28-29.



other annually elected Assistants or Magistrates. The Court of Assistants was the institutional ancestor of the Superior Court of Judicature of the Province of Massachusetts Bay, and of the Supreme Judicial Court of the Commonwealth; it also had the functions of an upper house of the legislature and a governor's council. For judicial business it met regularly twice a year, on the first Tuesday of March and the first Monday of September, to hear and determine appeals from the County Courts, and to exercise original jurisdiction in "all Causes of divorce,<sup>1</sup> all Capital and Criminal Causes, extending to Life, Member or Banishment."<sup>2</sup> Fortunately, an entry book of the Court of Assistants, beginning with the session of March 3, 1673/74, and covering almost the entire period of this volume, has been preserved. It was printed under the supervision of our late associate John Noble, as *Records of the Court of Assistants of the Colony of the Massachusetts Bay* (Vol. I) in the year 1901. This volume is an indispensable companion to ours for tracing the fate of appeals from the Suffolk County Court; frequent references to it will be found in our notes. The entry book of the Court of Assistants for the years 1671, 1672, and 1673 has been lost; but many of the cases have been reconstructed, as it were, from the Suffolk files, and were printed as part of volume III of the *Records of the Court of Assistants*, in 1928.

The Supreme Court of the Colony was the General Court, consisting of Governor, Deputy-Governor, Assistants, and the annually elected deputies of the towns. Since 1634, the General Court had been, as the revision of 1672 still declared,<sup>3</sup> "the chief Civil Power of this Common-

<sup>1</sup> Possibly the petition of Mrs. Naylor against her notorious husband, referred by the County Court to the Court of Assistants (below, p. 96; and see *Michelson v. Browne*, p. 103) asked for a divorce. The divorced Whartons appear on p. 914.

<sup>2</sup> Whitmore, *Colonial Laws, 1672-1686*, p. 36. The "Capital Lawes" in this compilation were still those of the Body of Liberties: idolatry, witchcraft, blasphemy, murder, manslaughter, bestiality, sodomy, adultery, man stealing, false witness, and conspiracy, with the addition of rape, cursing or smiting parents, or being a stubborn or rebellious son. The last two never seem to have been enforced, and there were no laws on the statute book for which loss of a "member" or banishment were prescribed. (Banishment was, however, imposed in some cases.) The inclusion of blasphemy among the capital laws makes it difficult to explain why the Suffolk County Court took cognizance of a case of that nature (below, pp. 114-115).

<sup>3</sup> Whitmore, *Colonial Laws, 1672-1686*, p. 34.

wealth." Its principal business was legislation, and it was little fitted by composition or temperament to deal with judicial matters. Capital cases were regularly appealed from the Court of Assistants to the General Court in case of a disagreement between bench and jury, or in case of dissent of two magistrates out of five, three out of seven, or a like proportion.<sup>1</sup> By virtue of its position as the "chief Civil Power," the General Court had the right to order a new trial on writ of review if convinced that justice had not been done in one of the lower courts, or to hear an appeal itself.<sup>2</sup> Any inferior court could certify to the General Court for "resolution" a difficult question which arose during the course of a case, but had to leave out the names of the parties.<sup>3</sup> Several answers to such questions were printed among the supplementary Laws and Orders of the General Court,<sup>4</sup> and one of them is cited by a litigant in one of the cases now published.<sup>5</sup> Also, three suits in these volumes were dismissed by the County Court until the General Court had resolved a question.<sup>6</sup> The General Court had the power to hear any case in the first instance, and in the early days of the colony this right had not infrequently been exercised in political cases such as that of Anne Hutchinson. However, in 1642, the General Court enacted that "all causes between Party and party, shall first be tryed in some Inferiour Court."<sup>7</sup> In the period covered by these volumes, the General Court showed little disposition to interfere with the ordinary course of justice in the lower courts, although several instances will be found of its ordering a review or entertaining an appeal.<sup>8</sup> One petition for the settlement of an estate was granted,<sup>9</sup> but the General Court referred two others to the County Court for action.<sup>10</sup>

The possession of these various judicial powers plainly made the General Court much more than the legislative body it is today.

<sup>1</sup> Whitmore, Colonial Laws, 1672-1686, p. 3.

<sup>2</sup> Id., pp. 34, 152.

<sup>3</sup> Id., p. 38.

<sup>4</sup> Whitmore, Colonial Laws, 1660-1672, p. 232; Whitmore, Colonial Laws, 1672-1686, pp. 206, 212, 272, 288, 294, 313.

<sup>5</sup> Woody v. Harrison, pp. 654-655.

<sup>6</sup> Patten v. Dyer, p. 215; Patten v. Woody, p. 215; Belcher v. Braintree Selectmen, p. 776.

<sup>7</sup> Whitmore, Colonial Laws, 1672-1686, p. 152.

<sup>8</sup> See Holowells v. Butler, at p. 1036; Simpson v. Salter, pp. 1040-1041.

<sup>9</sup> Patten v. Winsley, at p. 384.

<sup>10</sup> Bridgham Estate, pp. 848-849; Holowells v. Butler, at pp. 1033-1034.

Like the assemblies in other colonies, in many respects it was really a court. This should be no cause for surprise, for Charles H. McIlwain, in his *High Court of Parliament*, has shown that legislative and judicial powers were intermingled in the English Parliament, where even yet the House of Lords is the final court of appeal. The case of *Deane v. Hubbard*<sup>1</sup> reveals in a very interesting way the seventeenth-century theory of the nature of the General Court. A suit was brought by the assignee of a bill of exchange issued in connection with the illegal sale of Indians into slavery in the Azores. The defendant produced the record of a *supersedeas* issued by the Court of Assistants, forbidding payment, and the County Court granted a non-suit. The assignee in appealing contended that this order deprived him of his rights under title Bills of the General Laws, making bills assignable. Instead of arguing, as a lawyer would today, that the judges in the Court of Assistants should not disregard legislation, he treated the *supersedeas* and the statute as of the same nature — both being acts by courts — and then argued that the Court of Assistants could not override the action of a superior court, the General Court.

#### ATTORNEYS AND MAGISTRATES

In the period covered by these volumes, the practice of law was far from being recognized as a profession, or even a reputable calling. Much of the early prejudice against lawyers as a class, which characterized the founders of New England, still survived; and the conduct of some of those who are repeatedly found acting as attorneys in these records was certainly not such as to remove those prejudices. Thomas Lechford, almost the only man of legal training in early Boston who did not serve on the bench, was practically frozen out by the refusal of the courts to permit him to practise;<sup>2</sup> and this prohibition was embodied in Article 26 of the Body of Liberties of 1641:

Every man that findeth himself unfit to plead his owne cause in any Court shall have Libertie to imploy any man against whom the Court doth not except, to helpe him, Provided he give him noe fee or reward for his paines. This shall not exempt the partie him selfe from Answering

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<sup>1</sup> Below, pp. 788-791.

<sup>2</sup> Lechford, *Plaine Dealing*.

such Questions in person as the Court shall thinke meete to demand of him.

As attorneys willing to practise for pure love of justice were not easy to find, the practice grew up of litigants or defendants going to some magistrate for his advice and opinion before the cause came to trial. The Reverend Nathaniel Ward, the "simple cobbler of Agawam," who had practised law in London for some ten years before he entered the ministry, rightly denounced the propriety of this arrangement. After he had argued against it in his Election Sermon of 1641, an effort was made to forbid this practice of private consultation with judges. But, as Winthrop records, nothing was then done; partly on the ground that if the magistrates were forbidden to give legal advice, "we must then provide lawyers to direct men in their causes."<sup>1</sup>

As population increased, society became more complicated, and trials at law more numerous, the want of professional attorneys became more evident. Accordingly, Article 26 of the Body of Liberties was omitted from the revision of the statutes made in 1648.<sup>2</sup> Hence from that year it was legal to employ paid attorneys in the Massachusetts Colony; and in the revision of 1660<sup>3</sup> it was made unlawful for any person "to aske Counsel or advice, of any Magistrate, or Commissioner in townes, in any case wherein afterwards, he shall or may be Plaintiff, before such Magistrate or Commissioner." Apparently the number of lawyers and their influence increased more rapidly than the rulers desired, for in 1663 it was enacted by the General Court, "That no person who is an usual and Common Attorney in any Inferiour Court, shall be admitted to sit as a Deputy in this Court."<sup>4</sup> Sanction was also given to attorneys by a statute of October, 1673, making it lawful for any person to sue in any court "by his lawful Attourney Authorized under his Hand and Seale."<sup>5</sup> (Thus these seventeenth-century lawyers usually sued in their own names as attorneys, and not in their clients' names alone as is the practice today.)

<sup>1</sup> Winthrop's Journal (1908 ed.) II. 37.

<sup>2</sup> The Laws and Liberties of Massachusetts, Reprinted from the 1648 Edition (1929).

<sup>3</sup> Whitmore, Colonial Laws, 1660-1672, p. 141, title Counsel, Advice.

<sup>4</sup> Id., p. 224.

<sup>5</sup> Whitmore, Colonial Laws, 1672-1686, p. 211. See also title Attachments, Summons, sec. 3, id., pp. 7-8.



Of course it must not be assumed that all the attorneys mentioned in the cases in these volumes correspond to the lawyers of today. As Judge Bond has pointed out with respect to Maryland during the same period,<sup>1</sup> no sharp line could yet be drawn between attorneys in fact and persons who earned a regular livelihood by appearing in court for litigants. Many men of means, especially Englishmen with property or mercantile interests in the Bay Colony, doubtless employed agents to manage their affairs, and these agents would occasionally represent their employers in court as an incidental part of their work.<sup>2</sup> Again, a person who was ill or absent on a voyage would naturally appoint a member of his family or a friend as attorney in fact to represent him in a prospective lawsuit. Thus a wife who appeared as attorney for her husband in 1674/5 should not be regarded as a precursor of the woman lawyers of today.<sup>3</sup>

There can be no question, however, that many of the attorneys in the cases which follow, do correspond to the lawyers of today. The names of Hudson Leverett and others keep recurring with varying principals. The technical arguments in many of the Reasons of Appeal and Answers show that they were written by men accustomed to legal problems. A good example of such refined distinctions is the petition of the negress Hannah, convicted of stealing a box of surgical instruments;<sup>4</sup> she was obviously incapable of the ingenious reasoning urged on her behalf. Despite the absence of any recognized bar and of any systematic professional training, the Bay Colony probably contained many a man who might have been described, like Benjamin Mussey, as "a Subtle Lawyer."<sup>5</sup>

One case probably combines both types of attorneys and shows a lawyer representing an agent; Hudson Leverett sued as "subAttourny to William Merrit Attourny of Thomas Taylor of Newyorke."<sup>6</sup>

<sup>1</sup> Introduction to Proceedings of the Court of Appeals of Maryland, 1695-1729.

<sup>2</sup> See Patten's power of attorney from England, pp. 377-378; Addington v. Timberlak, p. 242, where Addington was attorney for a Rhode Islander.

<sup>3</sup> Batt v. Harris, pp. 539-542. Judge Bond's introduction mentions a feminine attorney in Maryland, who has been heralded as the first woman attorney at law in America.

<sup>4</sup> Below, pp. 1153-1157. For other illustrations of lawyerlike arguments, see Patten v. Dyer, at pp. 373-375; Purkis v. Winder, at p. 1004; Danson v. Eliott, at p. 1090.

<sup>5</sup> Below, pp. 761, 766.

<sup>6</sup> Order about Cornish, pp. 560-561.

In another case the County Court appointed an attorney to represent it in a criminal appeal.<sup>1</sup>

Conveyancing, a phase of the modern lawyer's work no less important than appearing in court, was also well developed. There is abundant evidence of the existence of skilled conveyancers in the complex form of the documents reprinted in these volumes — powers of attorney,<sup>2</sup> leases,<sup>3</sup> a deed creating a right of way,<sup>4</sup> an indenture dividing an estate,<sup>5</sup> an agreement to give a deed,<sup>6</sup> partnership articles,<sup>7</sup> a bond given on dissolution of a partnership,<sup>8</sup> bonds given by the purchasers of a brewery and an interest in a mill,<sup>9</sup> the discharge of a judgment debt,<sup>10</sup> as well as the numerous charter-parties, bills of lading, and other maritime instruments. The trust deeds for the benefit of creditors executed by Broughton in 1659 are said to have been "made by the aduice and Councell of one whose Judgment in the Law was accompted a bond." <sup>11</sup>

Hence, by the year 1671, when these records begin, paid attorneys were a recognized, but hardly a reputable, class. No educational or moral requirements were made of them; and they were not sworn in at the bar of the court, or in any way licensed or regulated. No one of the several persons who are found practising before the Suffolk County Court during the decade covered by these volumes had had, so far as we know, any legal training; and only one, Elisha Cooke, had had even a liberal education. Thomas Hutchinson observes that Hudson Leverett, whose name frequently appears as an attorney

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<sup>1</sup> Hutchinson, Atty, p. 95.

<sup>2</sup> Below, pp. 14-15.

<sup>3</sup> Below, pp. 295-296.

<sup>4</sup> Below, pp. 388-390.

<sup>5</sup> Below, pp. 550-554.

<sup>6</sup> Below, pp. 563-564.

<sup>7</sup> Below, pp. 451-453.

<sup>8</sup> Below, pp. 1042-1044.

<sup>9</sup> Below, pp. 899-900, 1047.

<sup>10</sup> Below, pp. 1170-1171.

<sup>11</sup> Below, p. 71. A few years after these volumes terminate, the Boston press began to issue printed forms and blanks for bonds and other legal documents. Broad-sides, Ballads, &c., printed in Massachusetts (Coll. Mass. Hist. Soc., LXXV), pp. vii, 16. The earliest known copy of a printed bond is dated 1685, and is found in the Massachusetts Archives, XL. 529; the earliest found in the Suffolk Files is dated 1688.

in these pages, "maintained but an indifferent character,"<sup>1</sup> — a statement amply supported by the accounts here given of Leverett's rash, indiscreet, and dangerous speeches in court, his sword-waving, misappropriation of linen, and precipitate flight downstairs chased by an irate householder.<sup>2</sup> The same statement might be made of Benjamin Gibbs<sup>3</sup> and several of Leverett's other colleagues. Indeed, Peter Goulding was forbidden by the court to appear as an attorney or draw up any writings for others,<sup>4</sup> and Richard Wharton, a man under bonds for good behavior, was similarly punished for fomenting litigation.<sup>5</sup> It was not until about 1730 that Jeremiah Gridley succeeded in imposing professional standards on the Suffolk bar.<sup>6</sup>

The magistrates, except for the training derived from their experience in official duties, were as innocent of legal education as the attorneys; and we know less about their legal ability because they decided cases without writing opinions, whereas the attorneys revealed their knowledge of law in drafting Reasons of Appeal and other documents. The only member of the bench during our period who is known to have had any legal education was Richard Bellingham, who died at the age of eighty on December 7, 1672. Governor Bellingham had been "bred a lawyer" in the reign of James I, had served as Recorder of the Borough of Boston in Lincolnshire in the following reign, and had represented that borough in the Parliament of 1628. He had played a leading part in the compilation of the first published Body of Laws in the Colony, that of 1648. Yet, as Hutchinson writes, Bellingham, "like some much greater lawyers, made his last will and testament in such a manner, that after some years' dispute, the general court thought it necessary to supply the defects of it, by making a disposition of the estate themselves."<sup>7</sup> The great Bellingham will case begins in these volumes.

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<sup>1</sup> History of Massachusetts Bay, I. 323 *n*.

<sup>2</sup> Leverett, p. 312; Palmer, p. 1069; Leverett, p. 1153; Dowden, pp. 890-894.

<sup>3</sup> See Ashton v. Gibbs, pp. 347-358; Whetcomb v. Gibbs, p. 512; Gibbs v. Whetcomb, pp. 587-592.

<sup>4</sup> Below, p. 186.

<sup>5</sup> Bellingham v. Smith, p. 248; Wharton v. Walley, pp. 745-746.

<sup>6</sup> In 1686, Andros obliged attorneys to take oath upon admission to the bar. In 1701, a statute required such an oath. Warren, History of the American Bar (1911), pp. 72, 77-78.

<sup>7</sup> History of Massachusetts Bay, I. 269-270 *n*. See also Dictionary of American Biography, II. 166.

## SOURCES OF LAW

The material in these pages must dispel the view that Massachusetts remained until after 1700 in a period of rude, untechnical, popular law. Before the colony was half a century old, its courts are shown busy with trusts for the benefit of creditors and their annulment for fraud, difficult questions of inheritance, and complex mercantile transactions afloat and ashore.

These pages also throw light on another interesting problem, the relative contributions of the English common law and the Bible to Massachusetts law in the seventeenth century. Two divergent views have been expressed on this question. Professor Charles J. Hilkey says:<sup>1</sup> "The colonists did not consider English law binding. The statutes passed by the General Court were to them the positive, and the Scriptures the subsidiary law." This view is largely shared by Paul S. Reinsch.<sup>2</sup> Both these writers consider that the English common law remained largely an alien system until the middle of the eighteenth century and was then received into the colonies by professionally trained lawyers and judges in somewhat the same way as Roman Law was received into Germany after the close of the Middle Ages. On the other hand is the position stated by Professor Theodore Plucknett:<sup>3</sup>

Indeed, it is easy to exaggerate the scriptural element in early Massachusetts law; . . . even at this early date [1648], and in spite of the talk about "judicial laws of Moses," there had been a voluntary reception of a good deal of common law, freely modified to meet local conditions.

Doubtless the division between these two schools of thought is a matter of varying emphasis rather than a sharp clash. Both sides would agree that the English common law had some influence during the seventeenth century. Both would recognize that its institutions

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<sup>1</sup> Legal Development in Colonial Massachusetts, 1630-1686, p. 144; see also pp. 5, 66 ff.

<sup>2</sup> "The English Common Law in the Early American Colonies," in *Select Essays in Anglo-American Legal History*, I. 367 ff. See also R. B. Morris, "Massachusetts and the Common Law: the Declaration of 1646," *American Historical Review*, xxxi. 443.

<sup>3</sup> Review of "Laws and Liberties of 1648," in *New England Quarterly*, III. 157-158.



and rules were not completely adopted; for instance, Massachusetts did not have three distinct common-law courts and a court of chancery. Both sides know that the Bible had some authoritative value. The difference lies in the relative importance which is attributed to the common law and to the Bible. There is considerable justification for the opinion of Hilkey and Reinsch that when the Massachusetts statutes failed to cover a situation, the colonists did not resort much to the English law in order to fill up the gaps and did make some use of the Bible for that purpose. On the other hand, the recent publication of the *Laws and Liberties of 1648* has made it plain that the English common law had a decisive influence upon the language and form of the colonial statutes. When once the common law has been recognized as the chief basis of legislation, the small use which was made of it in supplementing legislation possesses less significance than Reinsch and Hilkey thought.

Two other points have some bearing on this controversy. First, although the rules of English law were not followed so closely as a vocal minority in the colony wished, the very argument of the authorities in reply was not drawn from the Bible, and might have come from English lawyers. It was pointed out that corporations like the City of London had "diverse customs and by-laws different from the common and statute laws of England," and that a similar freedom of divergence to meet local needs was permissible for the Massachusetts Bay Company.<sup>1</sup> Secondly, whatever the theocratic inclinations of the colonists, they were too canny to treat with contempt the charter on which they depended for all their governmental powers and in which the King expressly authorized the General Court to make laws "not contrarie to the lawes of this our realme of England."<sup>2</sup> Occasional violations of this charter provision and more frequent forgetfulness of it in irresponsible colonial talk and writing cannot obscure the importance which it must have had for every thoughtful magistrate and member of the General Court.

The cases published here furnish no decisive solution of this problem, but it is interesting to review the part which the different sources of colonial law played in the legal discussions here reprinted.

*Statutes.* The numerous references to the statutes, which have

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<sup>1</sup> Hilkey, pp. 66-67.

<sup>2</sup> Poore, *Federal and State Constitutions, Colonial Charters, etc.*, I. 940.

been separately indexed, show that the Laws of 1660 and 1672 were very accurately known to litigants and their attorneys. These men also displayed lawyerlike skill in setting off one statute against another, e. g., in construing together the titles on Wills and Dowries in *Patten v. Dyer*.<sup>1</sup> They realized especially the importance of the preamble to the General Laws and Liberties — “our Magna Carta.”<sup>2</sup> In two prosecutions for criminal negligence<sup>3</sup> the accused men argued vigorously that there was no “express Law of the Country” applicable, under which their liberty or property could be taken in accordance with the preamble. On the other hand, it is difficult to find any express statute to support some of the prosecutions for minor offenses, and many of the torts for which damages were given do not appear to be defined by the General Laws.

*English law and law books.* The references to English law, other than as embodied in the Laws and Liberties, are not numerous. This must be due in part at least to the scarcity of law books. The frequency of English law books in Maryland is noted by Judge Bond,<sup>4</sup> as indicated by inventories and references in documents. Massachusetts Bay must have been far more scantily equipped. Among the numerous inventories of personal effects in these volumes, only one law book is mentioned — in the list of Captain Scottow’s property seized by the Indians in Maine — and even then nothing is said of its author or subject.<sup>5</sup> Although the General Court voted in 1647 to purchase two copies of each of the following: Coke on Littleton, Coke on Magna Carta, Coke’s Reports, Books of Entries, New Terms of the Law, and Dalton’s Justice of the Peace,<sup>6</sup> the only one of these cited in these pages is Coke on Littleton.<sup>7</sup> The only other law book specifically named is the volume combining the treatises of Malynes and Marius on the Law Merchant, which is extensively cited in a case on bills of exchange.<sup>8</sup>

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<sup>1</sup> Below, pp. 373–376.

<sup>2</sup> *Darvall v. Dudson*, at p. 366. See also *Cooke v. Broughton*, at p. 71.

<sup>3</sup> *Stuart and Ludden*, at p. 406; *Newcomb* at p. 696. Title Man-slaughter in the revisions of 1660 and 1672 covered only killing in self-defense, etc.

<sup>4</sup> Introduction to Proceedings of the Court of Appeals of Maryland, 1695–1729.

<sup>5</sup> *Scottow v. Shapleigh*, at p. 1112.

<sup>6</sup> Massachusetts Bay Records, II. 212.

<sup>7</sup> Below, p. 1105.

<sup>8</sup> *Mead v. Turner*, pp. 36–43. An order of 1650 by the General Court as to this book is quoted by Warren, *History of the American Bar*, p. 71.

Despite this apparent ignorance of legal treatises, English law books of another important type must have been in the possession of the colonists, to judge from internal evidence. The colonial knowledge of legal forms for conveyances and other documents has already been mentioned.<sup>1</sup> Some of this may have been derived from manuscript deeds, leases, etc., which the settlers brought with them from England, but it is probable that they also used books of legal forms. An interesting line for future investigation lies in the comparison of the leases, bonds, and other documents which appear in the records of seventeenth-century Massachusetts with the various English form-books of the period; in this way a scholar might ascertain which particular book or books existed in the Bay Colony at this time.

In many ways besides their knowledge of law books, the Maryland lawyers described by Judge Bond seem further advanced than their Massachusetts contemporaries. The Maryland lawyers were sworn and admitted to the bar. They reason more like lawyers today and are much concerned over the same kind of problems:— Was the Provincial Court the exact equivalent of the Court of King's Bench? How was appellate procedure to be reformed? Should judicial dissents be recorded? Although Maryland writs were in English as was true in Massachusetts, they were frequently called by a Latin title. In comparison, Massachusetts attorneys seem unlearned. Latin is used only three times in these pages to describe writs,<sup>2</sup> and it rarely occurs in other connections, the most interesting example being a maxim possibly taken from Coke.<sup>3</sup> Indeed, there must have been far less use of technical legal phrases of any kind in the Suffolk County Court than in the plays of Shakespeare. However, one attorney refers to that mythical person "John of Styles."<sup>4</sup>

Despite the scarcity of the small change of English law, some of its fundamental principles were stressed by litigants. The unlucky Ashton thrice insisted on "the liberty of an English subject."<sup>5</sup> Patten argued that a County Court order setting off real estate in fee to the widow of an intestate conflicted with the law of England

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<sup>1</sup> See this introduction, Attorneys and Magistrates.

<sup>2</sup> *Mittimus*, pp. 191, 487; *supersedeas*, pp. 788-791.

<sup>3</sup> Below, p. 298; see also for Latin phrases, pp. 533, 534, 536, 769.

<sup>4</sup> Below, p. 163.

<sup>5</sup> *Ashton v. Gibbs*, at pp. 347, 350, 351.

making his land descend to his heirs.<sup>1</sup> It may be significant that both Ashton and Patten were natives of England. This was hardly true of the Douglas claimants who cited Coke, as well as the Bible and a statute, to show that intestate real estate should go to them as heirs on the father's side.<sup>2</sup>

No English statute or judicial decision is cited in these volumes.

An additional English source for the colonial laws and procedure has been suggested by Professor Goebel.<sup>3</sup> He thinks that the colonists borrowed largely from the law prevailing in English local courts, such as county courts and recorders' courts in London and various boroughs, with which, coming from the middle strata of English society, they would naturally have had more experience than with the King's courts. His material, drawn from Plymouth Colony, has several resemblances to that in these volumes. Professor Goebel's conclusions have not yet found general acceptance, but they should provoke further study of English local courts. It is interesting in this connection to recall that Governor Bellingham had been Recorder of Boston, England.

*The Bible.* The arguments in these pages cite the Bible on several points. It would be unsafe, however, to conclude that this supports Hilkey's statement that "the Scriptures were an infallible guide for both judge and legislator."<sup>4</sup> The Bible was thoroughly known by everybody, so that it was natural to quote it for illustrative purposes in the course of a discussion. It is often so used in arguments to a jury today, and of course was much more intimately entwined in popular thought in the seventeenth century. Scriptural passages appear in judicial opinions in England, where the Bible was surely not a source of law. Thus the English Chancellor, Lord Ellesmere, in the reign of James I began an opinion: "The law of God speaks for the plaintiff, Deut. xxviii. 30,"<sup>5</sup> and then passed rapidly to the

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<sup>1</sup> Patten v. Winsley, pp. 377-384.

<sup>2</sup> Douglas Estate, pp. 1104-1105.

<sup>3</sup> "King's Law and Local Custom in Seventeenth-Century New England," Columbia Law Review, xxxi. 416.

<sup>4</sup> Hilkey, p. 68.

<sup>5</sup> Earl of Oxford's Case, 1 Chancery Rep. 1. This reference was suggested by Dean Pound as was also King v. University of Cambridge, 1 Strange 557, 567, where Chief Justice Pratt uses a Biblical illustration as late as 1736: "The objection for want of notice can never be got over. The laws of God and man



Year-Books. Some of the Scriptural references noted below seem to be thrown out persuasively in the same way, rather than considered as authoritative legal rules.

The most frequent citations are in support of the contention that a transaction ought to be proved by two witnesses.<sup>1</sup> Other Biblical references are used in urging that liability for goods purchased should be denied under oath;<sup>2</sup> that a tanner should perform his contract like him "that sweareth to his own hurt, and changeth not";<sup>3</sup> that a stranger should receive justice in the courts;<sup>4</sup> and that an accused negress should be released from prison so that she can serve her mistress's business "a Cording to the Law of God and the King."<sup>5</sup>

In the following instances it seems plain that the litigant endeavored to use the Bible as an authoritative source of law, in reliance on the preamble to the General Laws and Liberties forbidding life, liberty, or property to be taken unless under "some express Law of the Country . . . ; or in case of the defect of a Law, in any particular case, by the word of God." When a co-owner of the ketch *Recovery* was prosecuted for perjury and subornation of witnesses, Captain Bonner argued in support of conviction that though no particular statute speaks of these offenses, yet "the word of god is cleere for the punishment of such," citing chapter and verse.<sup>6</sup> When a debtor wished to pay in goods, his creditor insisted on having money; because "in defect or want of a Law the word of god is to be our Law, which saith By Soloman, that mony answers althings."<sup>7</sup> The preamble was also invoked by Stuart and Ludden when prosecuted for causing the death of a sailor on a sloop, who was killed by the sudden fall of the boom.<sup>8</sup> After insisting that no statute made them liable on this manslaughter charge, they cited a verse from Numbers about acci-

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both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence, Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldest not eat? And the same question was put to Eve also." For other English examples, see Warren, *History of the American Bar*, p. 65 n; *Ratcliff's Case*, 3 Coke Rep. 40a, b; Winfield, *Chief Sources of English Legal History*, p. 146.

<sup>1</sup> Below, pp. 203, 309, 535, 892-893, 1116.

<sup>3</sup> Below, p. 568.

<sup>5</sup> Below, p. 1155.

<sup>7</sup> Below, p. 615.

<sup>2</sup> Below, p. 52.

<sup>4</sup> Below, p. 624.

<sup>6</sup> Below, pp. 303-304.

<sup>8</sup> Below, pp. 404-408.

dental death to show that the law of God did not make them guilty. The reply to their appeal countered with a reference to Exodus, and contended that the law of God did not acquit them completely but only saved them from capital punishment. This is the only case in which the litigants on both sides matched Biblical texts against each other after the manner of a theological controversy. One would expect such a practice to be very common if the Bible were actually treated by the magistrates as a collection of authoritative legal rules. Usually, however, the opponent meets the Scriptural citation by a reference to a statute or by general arguments.

Another statute which expressly mentions the law of God is title Usury, which was unsuccessfully cited together with Leviticus in defense to a large claim on a book account.<sup>1</sup> Indeed, serious doubt is thrown upon the authoritative force of the Bible as law by the fact that about half the litigants who relied on Scriptural quotations lost their cases.

The most interesting case on the legal effect of the Bible is *Hollowells v. Butler*.<sup>2</sup> A claimant to decedent's property relied on the rules of inheritance laid down in the Book of Numbers. His opponent replied that this part of the Bible was an unsafe basis for Massachusetts law, since it provided for a complete redistribution of land every fifty years, which would upset the title of every purchaser of real estate.

*Judicial decisions as precedents.* One of the most important sources of law today consists of the principles declared by judges in their decisions. This was already true in seventeenth-century England. But this doctrine of the binding force of precedents could have little vitality in Massachusetts so long as few books of reports of English cases existed there, and while the decisions of its own courts were not printed and were not explained by judicial opinions. Still, this book shows a few instances in which a litigant argues that out of fairness the court ought to be consistent and abide by a principle which had been applied in an earlier decision.<sup>3</sup> Perhaps not much

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<sup>1</sup> Below, pp. 1147-1148.

<sup>2</sup> Below, at pp. 1034, 1037. The same Biblical passage is unsuccessfully cited in *Douglas Est.*, at 1105, as binding, in accordance with the preamble, in order to fill the gap in title Wills, which gave a decedent's property to his heirs without defining who they were.

<sup>3</sup> On the distinction between this principle of judicial consistency and the

importance should be attached to *Cooke v. Broughton*,<sup>1</sup> where trustees insist that a trust deed held valid in a prior proceeding ought not to be nullified later; this probably exemplifies the doctrine of "the law of the case" or *res adjudicata* rather than the doctrine of precedents. An illustration clearly in point is *Darvall v. Dudson*,<sup>2</sup> involving the possession of a ship seized as a prize in the Dutch War, where a petition alleged "many presedents," not only from maritime cases but also from a recent decision reprinted in this book,<sup>3</sup> which held it legal for the owner of land to retake possession. In *Rawson v. Briggs*,<sup>4</sup> an action for imprisoning the plaintiff's servant for debt before execution, the plaintiff cited "Major Savage's Case" where possession was not disturbed before judgment. In *Brattle v. Knight*,<sup>5</sup> a creditor who was denied an attachment against an insolvent estate undergoing administration for the benefit of all the creditors, mentioned in his Reasons of Appeal that this denial was contrary to the practice of the County Court and instanced the case of another estate. When fined for contempt on the ground that he had made improper reflections on the County Court, he petitioned for relief, saying that to bring the County Court a precedent of its own recent action was no reflection upon the court, and that similar objections had been made in other appeals without being considered an offense to the judges concerned. In *Woody v. Harrison*,<sup>6</sup> the unsuccessful litigant cited a resolution of the General Court three years before in answer to a question certified by the County Court. The statute made such a resolution binding upon the County Court in the particular case which gave rise to the question;<sup>7</sup> but here the resolution was urged as material in a different case which happened to involve a similar issue.

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modern principle of the binding force of judicial decisions, see Winfield, Chief Sources of English Legal History, pp. 149 f. Some of the passages he cites from the Year-Books, of oral court-room discussion mentioning past cases, resemble the Massachusetts material described below. See also Lewis, "The History of Judicial Precedent," *Law Quarterly Review*, XLVI. 341.

<sup>1</sup> Below, at pp. 70-71.

<sup>2</sup> Below, at pp. 365, 367.

<sup>3</sup> *Hutchinson v. Blake*, pp. 271-274.

<sup>4</sup> Below, at p. 714.

<sup>5</sup> Below, pp. 797-799.

<sup>6</sup> Below, at pp. 654-655.

<sup>7</sup> *Whitmore*, Colonial Laws, 1672-1686, p. 38. See this introduction, Appellate Courts.

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## LITIGIOUSNESS

The most disagreeable characteristic of the colonists which is revealed in these pages is their unwillingness to end a lawsuit. They never knew when they were beaten. The loser in the County Court sought reviews and appeals as long as he could, and when these failed he started suit all over again from a different angle. Magistrates and juries encouraged these pertinacious contestants by constant disregard of previous adjudications which ought to have settled the issues forever.

The most conspicuous illustration of this evil is the interminable controversies following the protracted voyage of the ketch *Recovery*, where the claims and counterclaims of Peck the stay-at-home part owner, Lawton the supercargo, Captain Bonner, able seaman Ireland, and Ashton the English passenger present rapidly changing variations, and successive arbitrations and compromises took place only to be flagrantly disregarded. The scene ranges from the gallop of Lawton and Ashton along the Mersey sands after the vessel in which Captain Bonner was blithely sailing away from Liverpool without them,<sup>1</sup> to Ashton's flight into Plymouth Colony and his struggle with the Rehoboth constable at the inn on the Ten Mile River.<sup>2</sup>

In *Clarke v. Bridgham*,<sup>3</sup> a widower sued for money said to have been received by the defendant from the plaintiff's late wife. He lost. Next year he brought an action of review and won. The defendant appealed, and then died. The plaintiff sued the executor on the former judgment, and the jury found for the defendant. Clarke also engaged in a prolonged controversy over his wife's estate with her son by a former marriage.<sup>4</sup>

Fathergon Dinely, the administrator of John Dinely, went through a series of actions trying to evade the payment of John's debt to Cornelius Steenwyck, of New York, whose Massachusetts agent was Davis. Occasionally Dinely brought a cross-action to attach Steenwyck's local property. He also tried to get back a bit of his own by

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<sup>1</sup> Peck v. Bonner, pp. 31-36.

<sup>2</sup> Ashton v. Gibbs, pp. 347-358.

<sup>3</sup> Below, pp. 99-100, 131-133, 201.

<sup>4</sup> Clarke v. Nicholls, pp. 5-9, 98-99.



stealing hay from Davis's barn. The last entry in the litigation shows an apparently undeserved defeat for the New Yorker.<sup>1</sup>

Another dragged out controversy concerned the settlement of the Buckmaster estate.<sup>2</sup>

Especially shocking is the outcome of *Holowells v. Butler*.<sup>3</sup> After Butler's right to an inheritance had been established by the County Court and confirmed by the General Court, a new jury took it away from him, and the Court of Assistants gave him no relief.

Although the evidence is not sufficient to support a charge that the colonists in general were as over-eager to begin lawsuits as they were stubborn about ending them, it is somewhat startling to see the son of Major John Pynchon of Springfield bringing an action in 1673 for the value of a horse borrowed in 1646.<sup>4</sup>

Occasionally litigious suitors were punished under the barratry statute,<sup>5</sup> and attorneys who fomented actions were virtually disbarred.<sup>6</sup> However, little could be accomplished to end the evil so long as magistrates and juries violated the elementary principle of *res adjudicata*. Little attention was paid by them to the need of certainty in the law. A litigant vainly pointed out the bad results of their vacillating disregard of previous decisions in the same controversy:<sup>7</sup>

Now if y<sup>t</sup> Deed, which y<sup>e</sup> Court accepted of as good & vallid in Law soe many yeares since, upon which there hath beene such transactions and Ingagem<sup>ts</sup> shall now by y<sup>e</sup> same Court be condemned as invallid; then wee appeale unto all men to judge what o<sup>r</sup> condition here is, & what sad consequences will follow; we shall be at an uncertainty what is vallid & what is invallid, what is Law & what not Law.

We cordially sympathize with Humphry Hodges who was fined ten pounds for vilifying the courts in the course of the Recovery litigation

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<sup>1</sup> *Dinely v. Steenwick*, pp. 167–173, 246–247, 292–293; *Dinely*, p. 234; *Davis v. Dinely*, pp. 568–569.

<sup>2</sup> *Clarke v. Lamb*, pp. 1131–1136.

<sup>3</sup> *Below*, pp. 1029–1037.

<sup>4</sup> *Pincheon v. Colleet*, pp. 319–322.

<sup>5</sup> *Whitmore*, *Colonial Laws, 1672–1686*, p. 9. See *Kelly v. Blower*, p. 13; *Atkinson v. Williams*, pp. 53–54; and other entries indexed under Barratry.

<sup>6</sup> See this introduction, *Attorneys and Magistrates*.

<sup>7</sup> *Cooke v. Broughton*, at pp. 70–71. The court nevertheless nullified the deed.

by declaring in the town house: "What one Court doth another undoeth."<sup>1</sup>

### FORMS OF ACTION

One of the most striking features of the civil litigation in these volumes is the frequency of the Action on the Case.<sup>2</sup> For example, in the first twenty-four cases where the form of action is specified, nineteen are case, one trespass upon the case, three debt, and one molestation. Any other portion of the book selected at random would show a similar preponderance of actions on the case. An examination of contemporaneous English reports shows no such frequency.<sup>3</sup> Still more important is the fact that the term "case" is applied in this Massachusetts litigation to suits which would surely not be actions on the case in England. This may be illustrated by three typical situations. (1) A sealed instrument in England gave rise to an action of covenant or of debt and never to an action on the case. In this book actions on sealed instruments are frequently called case.<sup>4</sup> It is true that a suit on a sealed instrument was occasionally called debt, but there is no apparent differentiation between debt and case. For instance, the first two cases on page 4<sup>5</sup> are suits on bonds; one is called debt and the other case. No instance of an action of covenant on a sealed instrument has been noted in these pages. (2) Case was employed to recover the possession of real estate.<sup>6</sup> Ejectment would

<sup>1</sup> Hodges, at p. 190.

<sup>2</sup> The same conclusion is stated by Washburn, *Sketches of the Judicial History of Massachusetts* (1840), p. 48. Goebel observes the same fact in *Plymouth Colony* and attributes it to the influence of the English county courts. "King's Law and Local Custom," *Columbia Law Review* xxxi. 437-438.

<sup>3</sup> Three different English reporters have been examined for cases in the year 1670-1671. Out of twenty-four cases in 1 T. Raymond 189-218, only three are case; four are assumpsit, one general assumpsit, seven debt, three trespass, four replevin, one covenant, one words (slander). Out of twenty-four cases in 1 Levinz 285-301, only four are case; eight are debt, four assumpsit, two general assumpsit, and there is one each for trespass, ejectment, words (slander), account, trover, and covenant. Out of twenty-four cases beginning 2 Saunders 73, nine are case, a somewhat larger proportion; nine are debt, two ejectment, three assumpsit, and one trover.

<sup>4</sup> For example, *Leverett v. Ely*, p. 4; *Greenough v. Hazelden*, p. 9; *Hutchinson v. Douty*, p. 11; *Thayre v. Rose*, pp. 322-325; *Hudson v. George*, p. 514.

<sup>5</sup> *Parker v. Champerone* and *Leverett v. Ely*.

<sup>6</sup> Examples are *Bacon v. Gold*, p. 12; *Oliver v. Woodmancy*, p. 17; *Cutler v. Hersy*, pp. 44-45; *Parker v. Corbyn*, p. 316; *Leverett v. Dowden*, p. 882.

have been the appropriate form of action in England, but the word "ejectment" does not appear in any of these Massachusetts suits. In the very first case,<sup>1</sup> an action of the case was brought to get possession of real estate under a mortgage. (3) A final illustration is found in instances of trespass to real estate. Here the English form of action appears to have been more familiar to the colonists, for the word "trespass" is occasionally used in such situations, but rather loosely. Some suits for the disturbance of the possession of real estate are definitely called actions of trespass.<sup>2</sup> Elsewhere suits for this wrong appear as trespass upon the case, or actions of the case for trespass.<sup>3</sup> Sometimes the word "trespass" is not used at all and the action is "case," although it would clearly have been trespass in England. Thus case was brought for breaking up the plaintiff's land and removing a landmark;<sup>4</sup> for cutting and carrying away the plaintiff's grass under pretense of title;<sup>5</sup> for carrying off grass and setting up new landmarks.<sup>6</sup> In addition to these various uses of case for actions which would have been of an entirely different nature in England, the term is used without discrimination for numerous situations which in England were dealt with by standardized forms of action on the case, like *assumpsit* and *trover*. Thus actions on the case were brought to recover the value of personal property;<sup>7</sup> for taking away personal property;<sup>8</sup> for detaining a chest of gold dust;<sup>9</sup> for money had and received;<sup>10</sup> for work done and goods delivered;<sup>11</sup> and for breach of express contracts.<sup>12</sup>

As already indicated, other forms of action besides case are some-

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<sup>1</sup> Sheafe v. Hawkins, pp. 1-3.

<sup>2</sup> Anderson v. Cox, pp. 204-205; 287, Gross v. Pearce, p. 275; Clarke v. Clement, p. 636.

<sup>3</sup> For example, Bucher v. Bastar, p. 17; Hastings v. Parks, pp. 97-98; Hudson v. Skinner, p. 290; Raynsfords v. Green, p. 853; Leverett v. Fox, p. 935.

<sup>4</sup> Hudson v. Hunt, pp. 289-290.

<sup>5</sup> Sanders v. Harris, p. 640.

<sup>6</sup> Woodcock v. Sutton, p. 773.

<sup>7</sup> Brackett v. Clarke, pp. 45-52.

<sup>8</sup> Leeds v. Richards, p. 100; Bill v. Wayte, p. 271.

<sup>9</sup> Goodman v. Cocks, pp. 200-201.

<sup>10</sup> Clarke v. Bridgham, pp. 99-100, 131-133; Davie v. Noys, pp. 459-460; Chadwick v. Manning, p. 470; Proutt v. Scarlett, pp. 792-793.

<sup>11</sup> Mosely v. Mason, p. 65.

<sup>12</sup> Lidgett v. Collins, pp. 43-44; Smith v. Carrington, p. 155.

times mentioned. Debt is the next most common, and suits on debts are called case or debt without any apparent reasons for the distinction. The occasional occurrence of trespass has been mentioned. Replevin appears in a few instances.<sup>1</sup> Slander is sometimes given as a form of action;<sup>2</sup> but similar suits are elsewhere called action of the case for slander,<sup>3</sup> or action of the case for high defamation.<sup>4</sup> An action of assault and battery was brought.<sup>5</sup> A form of action unfamiliar in the English reports is the action of unjust molestation in *Kelly v. Blower*,<sup>6</sup> which would have given rise to an action on the case in England, and indeed in these pages suits for the same tort are elsewhere called case.<sup>7</sup>

A natural explanation of the indiscriminating descriptions of the forms of action in these colonial cases as compared with the English situation is supplied by the wording of the Massachusetts writ of summons. In seventeenth-century England the plaintiff who wanted to begin an action at law had to choose from among a large number of writs the particular kind appropriate to his claim. Each type of writ was in stereotyped Latin wording. For example, the writ for case differed widely from the writ for debt or for covenant. Specimens of these writs are reprinted in the 1677 edition of Fitzherbert, *New Natura Brevium*, and the English translations which became official in the reign of George II are reprinted in *Tidd's Practical Forms*. The English writ in any suit thus contained some Latin key words which would immediately indicate the form of action to the clerk of the court. In marked contrast with these numerous technically worded Latin writs was the simple summons worded in English which was used in colonial Massachusetts during the time of the cases here published. Its statutory form, addressed to the defendant instead of the sheriff as in England, ran as follows:<sup>8</sup>

<sup>1</sup> *Sandys v. Locke*, pp. 205–209, *Hutchinson v. Blake*, pp. 271–274, are examples, and others will be found in the Index. See the form of the writ in *Whitmore*, *Colonial Laws*, 1672–1686, p. 162.

<sup>2</sup> *Marsh v. Machee*, p. 43; *Baker v. Joy*, p. 134.

<sup>3</sup> *Smith v. Cartwright*, p. 10.

<sup>4</sup> *Dudson v. Darvall*, pp. 385–387. Actions of defamation: *MackDaniel v. Hale*, p. 818, and *Legg v. Flood*, p. 880. Case upon defamation: *Barnes v. Harwood*, p. 984.

<sup>5</sup> *MackDaniel v. Hale*, p. 818.

<sup>6</sup> *Below*, p. 13.

<sup>7</sup> *Francks v. Ely*, p. 135; *Dudson v. Darvall*, pp. 385–387.

<sup>8</sup> *Whitmore*, *Colonial Laws*, 1672–1686, p. 162.



To [I. B] Carpenter, of [D.] You are Required in His Majesties Name to appear at the next Court, holden at [B.] on the day of the month next ensuing; to answer the complaint of [N. C.] for with-holding a debt of due upon a *Bond* or *Bill*; or for two Heifers &c. sold you by him; or for work, or for a Trespass done him in his Corn or Hay by your Cattle, or for a Slander you have done him in his name, or for Striking him, or the like; And hereof you are not to fayle at your Peril. Dated the day of the Month.

This same form of summons was used in all civil suits (except replevin), regardless of the nature of the claim. There were no technical key words to indicate the form of action automatically, and the writ merely set out the basic facts which must have been in many instances rather informally stated. This form of writ is surprisingly modern. The title Attachments, Summons<sup>1</sup> required the plaintiff's case to be "briefly specified in the Warrant," unlike the stereotyped English writ, which might leave the defendant in doubt as to the real nature of the claim against him. Colonial defendants were insistent upon the observance of their statute.<sup>2</sup> Later on, the Massachusetts writ became more technical and less informative. The writ prescribed by the statute of 1783 was directed to the sheriff:<sup>3</sup> "We command you, that you summon *A. B.* [the defendant] . . . to appear and then and there . . . to answer to *D. E.* [the plaintiff] . . . in a plea of ———," etc.

The probable relation between these three types of writs and the classification of forms of action now becomes plain. Any writ in England was earmarked by its technical form. The Massachusetts writ of 1783 definitely specified the form of action in the vacant space after "plea of." Unlike both types, the colonial writ between 1670 and 1680 was a recital of the facts without any key words, so that it did not readily lend itself to pigeon-holing. The clerks, Freegrace Bendall or Isaac Addington, on looking at the writ, would merely get a pretty good notion of the nature of the claim. Once in a while some such word as "debt," "trespass," or "slander" would catch their eyes and be set down in the record as the form of action, but ordinarily these clerks would describe the action as "case" and let it go at that.

<sup>1</sup> *Id.*, p. 7.

<sup>2</sup> See *Jones v. Crispe*, at p. 458.

<sup>3</sup> *Mass. Perpetual Laws, 1780-1800* (1801), i. 199.

## PLEADING AND PRACTICE

Pleadings in the trial court must have been largely oral. It is true that some references to written pleadings are found in the statutes before 1660. The Body of Liberties of 1641<sup>1</sup> says that if the plaintiff files a written declaration the defendant shall have liberty and time to give in his answer in writing. A statute of 1647 orders that all plaintiffs or their attorneys in civil actions shall file a written declaration at least three days before court opens, whereby the defendant may have time to answer in writing.<sup>2</sup> Although this statute gives a vigorous recital of the evils of oral pleadings, which caused defendants to complain that they knew not what to answer to or what witnesses to summon until they appeared in court, the statute of 1647 must have been either a dead letter or a nuisance, for it was, like the 1641 provision, omitted from the two revisions which were in force during the period of these volumes.

These Suffolk County Court records indicate that the attempt to require written pleadings had little effect in establishing such a practice. The statement of the plaintiff's case in the summons probably served in most cases to give sufficient information to the defendant about the nature of the claim against him. Written declarations are found in only a handful of cases, in five of which they are reprinted.<sup>3</sup> It may be significant that all except one of these cases occur as late as 1679. We find a written answer or pleas in only two cases;<sup>4</sup> these are reprinted. The word "plea" is sometimes used in a broader sense to describe the plaintiff's statement of his case.<sup>5</sup> Demurrers do not appear to be mentioned although the phrase was known in the colony during this period, as is shown by a statute on Attorneys in 1673.<sup>6</sup> The absence of controversies about pleadings,

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<sup>1</sup> No. 27. Reprinted in Whitmore's *Bibliographical Sketch of the Laws of the Massachusetts Colony* (1630-1686), p. 39.

<sup>2</sup> *Massachusetts Bay Records*, II. 219.

<sup>3</sup> *Sheafe v. Palmer* at pp. 829-830; *Scottow v. Shapleigh*, at pp. 1114-1116; *Dudley v. Paige*, at p. 1120, called "plea"; *Townsend v. Williams*, at p. 1127, in *Court of Assistants*; *Cooke v. Oliver*, at pp. 1146-1148. A declaration is mentioned in *Gibbs v. Whetcomb*, at p. 588.

<sup>4</sup> *Cooke v. Broughton*, at p. 68; *Cooke v. Oliver*, at pp. 1148-1149.

<sup>5</sup> *Mead v. Turner*, at p. 39; *Dudley v. Paige*, at p. 1120.

<sup>6</sup> Whitmore, *Colonial Laws, 1672-1686*, p. 211.

which were so frequent in contemporary English cases, may be due to the wise statutory provisions in title Attachments, Summons, that "no . . . Pleading . . . shall be abated, arrested or reversed upon any kinde of circumstantial errors or mistakes, if the person and cause be rightly understood and intended by the Court."<sup>1</sup>

In England, pleadings were in Latin until 1731, but such written pleadings as we find were, of course, in English. The same reform was made by a Cromwellian statute of 1650 in England, so that the Puritans on both sides of the ocean were in advance of the time.<sup>2</sup>

Other interesting points on civil procedure are a suit in *forma pauperis*;<sup>3</sup> several instances of objections to the misjoinder of two cases of action in one writ;<sup>4</sup> a group of trials in the defendant's absence;<sup>5</sup> the vacating of an erroneous judgment by the court which gave it.<sup>6</sup>

Attachment was the usual method of beginning a suit. This helps to explain the ease with which attachments are obtained in Massachusetts today as contrasted with the practice in New York. Although the form of attachment given in the General Laws and Liberties of 1660 and 1672 directs only the defendant's body and goods to be taken, an attachment reprinted here<sup>7</sup> mentions lands as well as goods, and the marshal's return shows that land was attached. Other attachments are reprinted in full.<sup>8</sup> In one case<sup>9</sup> the attachment and summons were attacked as defective. In another, a constable was sued for making a false return to an attachment.<sup>10</sup>

Executions were also levied on land,<sup>11</sup> contrary to the practice in England where land could be taken to meet a judgment only in very limited ways.<sup>12</sup> An order to the marshal to deliver the possession of

<sup>1</sup> Id., p. 7.

<sup>2</sup> Robinson, "Anticipations under the Commonwealth of Changes in the Law," Select Essays in Anglo-American Legal History, I. 480.

<sup>3</sup> Plumb v. Parke, p. 146.

<sup>4</sup> Henchman v. Rock, at p. 197; Giffard v. Leverett, p. 747; Saffin v. Jesson, pp. 774-775; Lynde v. Haughton, p. 1009.

<sup>5</sup> Below, pp. 417-420.

<sup>6</sup> Porter v. Appleton, pp. 1137-1139.

<sup>7</sup> Below, p. 69.

<sup>8</sup> Below, pp. 173, 760.

<sup>9</sup> Cooke v. Oliver, pp. 1144-1150.

<sup>10</sup> Parmiter v. Perry, p. 294.

<sup>11</sup> Cooke v. Broughton, at p. 73; Clarke v. Nicholls, at p. 79; Willys v. Baker, pp. 1073-1074.

<sup>12</sup> Blackstone, Commentaries, III. 418.

land is found in one case.<sup>1</sup> On petition of the defendant an execution was respited.<sup>2</sup> A marshal was fined for levying an execution unlawfully.<sup>3</sup>

Executions against the body are numerous.<sup>4</sup> The statement of Reinsch<sup>5</sup> that imprisonment for debt was not in use, except when property was concealed, is not borne out by the cases. Probably he was led to say this by the provisions of title Arrests,<sup>6</sup> but then, as so often today, creditors must have easily circumvented statutory restrictions on imprisonment for debt. One debtor recovered twenty pounds for illegal imprisonment.<sup>7</sup> The obduracy of creditors twice finds picturesque expression in the threat that a debtor should rot in jail till dice were made of his bones.<sup>8</sup> Sometimes debtors were given the opportunity to earn money to pay off their obligations.<sup>9</sup> In one case a master prayed for the release of a servant imprisoned by a creditor.<sup>10</sup> Another case shows that debtors were sold.<sup>11</sup>

The losing party frequently instituted an action of review. The statutes<sup>12</sup> allowed this if there was any new evidence or other new matter to plead, but it seems to have been often done for no reason except the desire for a second chance before a different jury. Ordinarily the reviews here included were in the County Court, but in one instance the Court of Assistants was asked to review its own decision.<sup>13</sup>

Appeals to the Court of Assistants are very frequent, often after an action of review in the County Court. The usual documents are the Reasons of Appeal and the opponent's Answer to them. These documents form our most useful sources for views of law. In one case<sup>14</sup>

<sup>1</sup> Oxenbridge Complaint, p. 437.

<sup>2</sup> *Sands v. Hutchinson*, pp. 460-461.

<sup>3</sup> *Whaley*, p. 1164.

<sup>4</sup> *Harris v. Edsall*, p. 102; *Scottow v. Felton*, pp. 317-318; *Lytherland v. Brown*, pp. 500-504; *Lytherland v. Veren*, p. 529; *Fogg v. Williams*, pp. 656-660; *Hukely to Rawson*, pp. 677-678.

<sup>5</sup> *Select Essays in Anglo-American Legal History*, I. 375.

<sup>6</sup> *Whitmore, Colonial Laws, 1672-1686*, p. 6.

<sup>7</sup> *Walley v. Waite*, pp. 802-803.

<sup>8</sup> *Below*, pp. 139, 657.

<sup>9</sup> *Richardson and Read*, p. 117.

<sup>10</sup> *Man v. Hews*, p. 1058.

<sup>11</sup> *Bleaze v. Edwards*, p. 925.

<sup>12</sup> *Title Tryals, Whitmore, Colonial Laws, 1672-1686*, p. 152.

<sup>13</sup> *Mead v. Turner*, at p. 39.

<sup>14</sup> *More v. Jones*, pp. 156-158.



the appellee filed a replication to the Reasons of Appeal. Sometimes the appellant also filed a petition or declaration duplicating the Reasons of Appeal.<sup>1</sup> In one case the appellee filed a petition duplicating his Answer.<sup>2</sup> The Court of Assistants enforced the statutory requirement that the party appealing must sign his reasons.<sup>3</sup> In several amusing pages the attention of the Court of Assistants is called to the statutory provision that the Reasons of Appeal must not reflect on court or parties by provoking language.<sup>4</sup> For violation of this provision Captain Thomas Brattle was removed from his office as commissioner in Boston and fined £100.<sup>5</sup> In criminal appeals the Answers to the Reasons of Appeal were sometimes written and signed by the clerk of the County Court,<sup>6</sup> but in a barratry appeal the Court appointed an attorney to represent it.<sup>7</sup> When Dowden appealed from his conviction for beating Hudson Leverett, the latter filed a petition in the Court of Assistants for restoration to possession of the real estate which had given rise to the controversy.<sup>8</sup>

Contrary to modern practice, the appellate court did not usually send the case back to the lower court for a new trial, although in one instance a review by the County Court was ordered.<sup>9</sup> Ordinarily the Court of Assistants retried the case itself, with its own jury. No jury was used in one case where the appeal was limited to an issue of law.<sup>10</sup>

### JURIES

Jury trials appear to have been a matter of course in the County Court in both civil and criminal cases. Occasionally the fact that a jury trial was claimed in a criminal prosecution is expressly men-

<sup>1</sup> *Dudley v. Paige*, at pp. 1120-1121; *Townsend v. Williams*, at p. 1127. See also *Sands v. Hutchinson*, pp. 460-461, petition for respite of execution.

<sup>2</sup> *Hutchinson v. Paine*, at p. 535.

<sup>3</sup> Title Appeal, sec. 2; *Snelling*, pp. 1103-1104; *Townsend v. Williams*, at p. 1130.

<sup>4</sup> Title Appeal, sec. 2; *Jones v. Crispe*, at p. 459; *Flood v. Legg*, at p. 859; *Lidgett v. Smith*, pp. 876-879; *Hill v. Obbinson*, at p. 1095; *Cooke v. Oliver*, at p. 1148.

<sup>5</sup> *Brattle v. Knight*, at p. 799.

<sup>6</sup> *Hodges*, pp. 190-193; *Stuart and Ludden*, pp. 404-408.

<sup>7</sup> *Hutchinson*, p. 95.

<sup>8</sup> *Dowden*, pp. 890-894.

<sup>9</sup> *Clarke v. Nicholls*, pp. 5-9.

<sup>10</sup> *Sands v. Hutchinson*, pp. 460-461.

tioned,<sup>1</sup> and in one prosecution the accused failed to claim a jury.<sup>2</sup> A jury trial was asked for contempt of court.<sup>3</sup> Five civil cases were submitted to the bench by the parties,<sup>4</sup> and in one suit the jury left the issue of damages to the bench.<sup>5</sup>

Eleven jurors tried a civil suit by consent of the parties.<sup>6</sup> A jurymen in the Court of Assistants who had appealed from a conviction for illegal sales of liquor was tried by his eleven associates, who acquitted him.<sup>7</sup>

The scope of the jury's powers is discussed in several cases. The medieval employment of the jury as witnesses<sup>8</sup> possibly survived in popular thought, for when a defendant in a suit for obstruction of a right of way alleged that the wrong had not been proved by two witnesses, the plaintiff replied: "I have sufficiently proved y<sup>e</sup> Same by more then 12 Wittnesses who were the Last Jury."<sup>9</sup> Perhaps, however, he only means that the jury took a view of the illegal fence. In one verdict which was reversed the jury assessed damages by capricious methods not unfamiliar today.<sup>10</sup> Jurors had the statutory privilege of asking advice of any man in open court, but an appellee successfully argued that they were not bound to do so and could bring in a special verdict instead.<sup>11</sup> Although one litigant contended that the jury's oath to give a verdict according to the evidence and the laws made "Jurys . . . as Well Judges of Law as the Majestrats,"<sup>12</sup> his argument proved unpersuasive, and we frequently find juries leaving legal issues to the bench through the ingenious device of a special

<sup>1</sup> Starkey, p. 258 — abduction; Dobleday, p. 626 — lasciviousness; Rigby, p. 940 — drinking and wife-beating.

<sup>2</sup> Stuart and Ludden, at p. 408 — manslaughter. On early Massachusetts criminal trials without right to a jury, see Frankfurter and Corcoran, "Petty Federal Offences etc.," *Harvard Law Review* xxxix. 938-942.

<sup>3</sup> In the Court of Assistants; *Brattle v. Knight*, at p. 799.

<sup>4</sup> *Kent v. Phillips*, pp. 929-930; *Savage v. Hutchinson*, p. 1039; *Maryon v. Wright*, pp. 1121-1122; *Indicott v. Kent*, pp. 1140, 1144.

<sup>5</sup> *Hutchinson v. Sands*, p. 470.

<sup>6</sup> *Cutler v. Jacob*, p. 530.

<sup>7</sup> *Indicott*, p. 1101.

<sup>8</sup> Thayer, *Preliminary Treatise on Evidence*, pp. 130-132.

<sup>9</sup> *Skinner v. Lowell*, at p. 391.

<sup>10</sup> *Legg v. Flood*, pp. 1054-1055.

<sup>11</sup> *Title Jurors, Juries*, sec. 5; *Middlecott v. Scotto*, pp. 821-822.

<sup>12</sup> *Batt v. Harris*, at p. 540; see the form of the juror's oath in Whitmore, *Colonial Laws, 1672-1686*, p. 167.

verdict in the alternative. Thus in an action by a husband upon an ante-nuptial contract with his wife, the jury brought in a special verdict finding specified damages for the plaintiff if man and wife had power to make bargains with one another, and if not for the defendant with costs. The magistrates on perusal of this case and verdict decided for the defendant.<sup>1</sup> Other special verdicts allowed the bench to determine whether deeds were legally valid,<sup>2</sup> whether a kidnapped sailor was liable to pay passage-money,<sup>3</sup> the powers of executors and administrators,<sup>4</sup> whether evidence was sufficient to prove a promise,<sup>5</sup> whether a tenant was discharged from the obligation to pay rent by the landlord's breach of covenant (a confused special verdict),<sup>6</sup> and other legal issues.<sup>7</sup> The statutory power of the bench to determine matters of equity could also be handled by a special verdict.<sup>8</sup>

One of the most interesting controversies in this whole collection concerns the right of a juror to disagree with his eleven colleagues.<sup>9</sup> Jacob Jesson was less successful in asserting his independence as a juryman than his contemporary Bushell in England. The dispute is narrated in the *New England Quarterly* by Mr. C. L. Lundin.<sup>10</sup> The related problem of the attainder of juries appears in three cases,<sup>11</sup> one of them part of the protracted litigation growing out of the voyage of the *Recovery*.

<sup>1</sup> *Clarke v. Nicholls*, pp. 5-9, 98-99.

<sup>2</sup> *Bucher v. Bastar*, p. 17; *Checkly v. Williams*, p. 372.

<sup>3</sup> *Lidgett v. Collins*, pp. 43-44.

<sup>4</sup> *Bellingham Executors v. Smith*, pp. 240-241; *Middlecott v. Scotto*, pp. 821-822.

<sup>5</sup> *Jones v. Crispe*, at p. 459.

<sup>6</sup> *Hill v. Obbinson*, at p. 1095.

<sup>7</sup> *Jay v. Wharton*, pp. 577-578; *Winslow v. Bendall*, pp. 611-612; *Norman v. Skinnar*, pp. 803-806; *Man v. Wing*, p. 1039; *Paige v. West*, pp. 1080-1083.

<sup>8</sup> *Hutchinson v. Paine*, at p. 536; see title *Jurors, Juries*, sec. 1, and this introduction, *Equity*.

<sup>9</sup> *Gibbs v. Whetcomb*, pp. 587-592. The preceding cases leading up to the dispute are *Edmunds*, p. 486; *Waters*, pp. 490, 493; *Whetcomb v. Gibbs*, p. 512.

<sup>10</sup> *New England Quarterly*, v. 812-818.

<sup>11</sup> *Lawton and Bonner's Bond*, at pp. 180-181, see also *Lawton*, at p. 304; *Jay v. Woodmansey*, at p. 577; *Cooke v. Oliver*, at p. 1150. The statute of May 15, 1672 (*Whitmore, Colonial Laws, 1672-1686*, p. 201) is not absolutely clear that only a jury in the Court of Assistants could be attainted whereas the verdict of a County Court jury had to be accepted by the bench. Such is the interpretation of *Hilkey (Legal Development in Colonial Massachusetts, pp. 79-80)*, but neither *Thayer (Preliminary Treatise on Evidence, p. 173 n)* nor

## EVIDENCE

In England during the seventeenth century the rules of evidence were still in process of formation,<sup>1</sup> and it is only natural that we should find them operating in the Bay Colony in a still more elementary fashion. Yet, we can already detect the germs of several modern rules, and there was considerable insistence on a few principles, particularly the desirability that the main issues should be proved by at least two witnesses. A statute expressly required this or its equivalent in capital cases,<sup>2</sup> and litigants repeatedly urged that a similar rule should apply in trials of less serious offenses and in civil suits.<sup>3</sup> This argument relied on Scriptural texts as well as on the analogy of capital cases.

The common-law rule that the parties to a civil suit were incompetent to testify was probably in force, although it is not expressly mentioned. However, the defendant was allowed to disclaim liability under oath both in civil cases<sup>4</sup> and in criminal prosecutions for the sale of liquor to Indians, in accordance with the statutory provision.<sup>5</sup> One man on trial for this offense refused to take the oath.<sup>6</sup> When witnesses other than parties were interested in the result of a case, objection to the use of their testimony was occasionally made.<sup>7</sup>

Instead of the oral testimony used in the English common-law courts, a statute of 1650 required the testimony of witnesses to be

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Reinsch (in *Select Essays in Anglo-American Legal History*, I. 379) speaks of such a limitation. It seems possible that the "unless" clause in the statute of 1672 modifies the whole preceding portion of the sentence and not merely the preceding clause. The statute of September 10, 1684, modifying attaints (Whitmore, *Colonial Laws, 1672-1686*, p. 319), throws no light on the problem. The three attaints in this book, cited above, were against juries in the Court of Assistants. Unquestionably, the attaint was always tried by a jury of twenty-four in the Court of Assistants.

<sup>1</sup> J. H. Wigmore, *Treatise on Evidence* (2d ed. 1923) I. 108.

<sup>2</sup> Title Witnesses, sec. 1, enacted in 1641.

<sup>3</sup> Waldren v. Smith, at p. 203; Stoughton v. Bishops, at p. 297; Noakes, pp. 308-310; Hutchinson v. Paine, pp. 530-536; Dowden, pp. 890-894. On the history of the numerical system of counting witnesses, which England was already abandoning, see Wigmore, IV. 300.

<sup>4</sup> Golden v. Clements, at p. 15.

<sup>5</sup> Title Indians, sec. 10; Prince, p. 181; Penniman, p. 328; Eaton, p. 491.

<sup>6</sup> Mason, p. 1013.

<sup>7</sup> Newcomb pp. 695-697; Clarke v. Lamb, pp. 1134-1135.



submitted in writing.<sup>1</sup> Although this statute was not actually embodied in the revisions of 1660 and 1672, title Records, Recorders, Clerks in these revisions required every judgment given in any court to be recorded in a book, "and all the Evidences (which are to be given in, in Writing, in fair and large papers) shall be kept." This statutory requirement appears to have been generally observed because the testimony of the witnesses in these cases always seems to be in the form of a deposition. However, another statute, title Witnesses, required that when the witness lived within ten miles of the court, his deposition should not be used unless he were also present in court to be further examined about it. The material in these pages contains no indication of the cross-examination of witnesses. An order of 1674 recites the confusion caused by the use of the same deposition in several cases, and requires copies to be put in.<sup>2</sup> A deposition in perpetual memory is mentioned.<sup>3</sup>

Many money claims were based upon the account books of merchants, and several cases discussed at length the proper methods for the proof of such books.<sup>4</sup> Proof of the handwriting of the drawer of a bill was submitted in *Dinely v. Steenwick*<sup>5</sup> by a witness who testified that he knew Dinely's handwriting exceeding well and declared that the signature was his hand. The rule requiring that when a document was introduced, it must be proved by the evidence of the attesting witnesses, appears in several cases.<sup>6</sup> A bond executed in England was proved by the deposition of the attesting witness taken in England.<sup>7</sup> Two cases discuss the situation where an attesting witness is dead or refuses to appear.<sup>8</sup>

Hearsay evidence was loosely admitted<sup>9</sup> as in England at this time,

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<sup>1</sup> Massachusetts Bay Records, iv (1). 27.

<sup>2</sup> Below, p. 480.

<sup>3</sup> Below, pp. 1030-1031.

<sup>4</sup> *Waldren v. Smith*, pp. 202-204; *Joy v. Baker*, pp. 393-394; *Jay v. Woodmancy*, pp. 572-577; *Batt v. Welds*, pp. 614-617; *Lidgett v. Smith*, pp. 876-879; *Cooke v. Oliver*, pp. 1144-1150.

<sup>5</sup> Below, p. 169.

<sup>6</sup> *Clarke v. Holmes*, pp. 1079-1080; *Cooke v. Oliver*, at pp. 1144-1145.

<sup>7</sup> *Purkis v. Winder*, pp. 1002-1005.

<sup>8</sup> *Stoughton v. Bishops*, at p. 299; *Waldron v. Marshall*, at p. 763.

<sup>9</sup> *Patten v. Winsley*, pp. 377-384; *Waldron v. Marshall*, pp. 759-764; *Proutt v. Scarlett*, pp. 792-793; *Drurey Fined*, pp. 837-841; *Holowells v. Butler*, pp. 1029-1037; *Dudley v. Paige*, at pp. 1119-1120.

but occasionally objections were made to its probative value.<sup>1</sup> In some of these cases the evidence might be proper today as reports of admissions by parties, but present-day courts would not permit the use of admissions made during negotiations for a compromise, as in *Cooke v. Oliver*.<sup>2</sup> Two important exceptions to the modern hearsay rule are illustrated by the testimony of old men as to neighborhood reputation concerning an alleged public way,<sup>3</sup> and the use in bastardy proceedings of the mother's declarations in travail about the identity of the father.<sup>4</sup>

Character witnesses appeared for the defendant in a bastardy prosecution.<sup>5</sup>

The best evidence rule is suggested by a litigant's insistence that a bill of exchange be produced and not merely described.<sup>6</sup>

Samuel Bennett, a key witness who went back on his testimony, and was said to be ready to "Swear any thing for a pint of Liquor," was disabled from testifying in any case whatever.<sup>7</sup>

### EQUITY

The Puritan has been described as "always a consistent and thoroughgoing opponent of equity,"<sup>8</sup> but the material in these cases indicates that the relations were not quite so unfriendly. Although there was no separate Court of Chancery as in England, an early statute embodied in the General Laws and Liberties, title Jurors, Juries, provided: "If there be matter of apparent equity, as the forfeiture of an Obligation, breach of Covenant without damage, or the like, the Bench shall determine such matters of equity." This statute is specifically cited in one of our cases.<sup>9</sup> References are often made to

<sup>1</sup> *Woody v. Harrison*, at p. 653; *Williams v. Fogg*, pp. 685-687.

<sup>2</sup> *Below*, pp. 1145-1146.

<sup>3</sup> *Wigmore*, III. 330 ff.; *Woody v. Harrison*, pp. 651-656.

<sup>4</sup> *Wigmore*, II. 662, citing Massachusetts statute of 1882; *Cowell*, p. 402; *Preist*, p. 409; *Hemaway and Peggy*, p. 555; *Cox*, p. 643; *Boulter*, p. 719; *Butler*, pp. 915-916; *Childe*, p. 939.

<sup>5</sup> *Trott*, p. 222.

<sup>6</sup> *Cooke v. Oliver*, at pp. 1147-1148.

<sup>7</sup> *Bennett*, p. 786; see *Waldron v. Marshall*, at p. 763.

<sup>8</sup> *Roscoe Pound*, "Puritanism and the Common Law," *American Law Review*, XLV. 825, reprinted in his *Spirit of the Common Law*. Attacks on Chancery under Cromwell are described by *Robinson*, "Anticipations under the Commonwealth of Changes in the Law," *Select Essays in Anglo-American Legal History*, I. 470-472.

<sup>9</sup> *Hutchinson v. Paine*, at p. 536, subsequently discussed.



equity as something to be observed by the courts.<sup>1</sup> Of course, the word "equity" was sometimes used rather loosely as synonymous with justice rather than in the technical sense to describe a system of legal rules distinct from those of the common law. Perhaps this is true of the cases just cited and also of the phrase in the preamble to the General Laws, that no man shall be deprived of life, liberty, or property, "unless it be by virtue or equity of some express Law of the Country." This phrase is specifically relied on in *Cooke v. Broughton*, where the plaintiff objects, "Now noe such Law or equity of it hath yett beene produced; & therfore o<sup>r</sup> Estate & others ought not to be so taken from us."<sup>2</sup> However, in *Hutchinson v. Paine*,<sup>3</sup> involving an equitable defense to a bond, "equity" is clearly used in the technical sense.

Still more important is the fact that the Suffolk County Court and the Court of Assistants are frequently shown giving relief which in England could have been obtained only from the Court of Chancery. The best illustration is furnished by the practice of "chancering"<sup>4</sup> bonds. A bond is an instrument under seal which promises to pay a definite sum of money, subject to the condition that the promise is to become void if the signer of the bond performs a specified act. For instance, in the first case of the sort here published,<sup>5</sup> three men who owed a debt of £90 gave their creditor a bond for twice that amount (£180), conditioned on the payment of the debt on a day named. They failed to perform this condition by paying £90 at the time appointed. An English court of common law would have given the creditor the full £180, because the debtors had expressly promised that sum in case of default. However, the debtors could file a bill in the Court of Chancery, which would disregard the form of the bond and look at its real purpose to secure the payment of the original debt; consequently the Chancellor would cut down the creditor's recovery to his actual loss — the principal of the debt with interest for the delay — and forbid him to collect more because it would be unconscionable for him to insist on his pound of flesh.

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<sup>1</sup> *Ashton v. Gibbs*, at p. 356; *Sharp v. Rider*, at p. 363; *Patten v. Dyer*, at p. 375; *Jones v. Crispe*, at p. 459.

<sup>2</sup> Below, p. 71.

<sup>3</sup> Below, pp. 530-536, especially, p. 534.

<sup>4</sup> See below, p. 4 n. The common term today is "chancering."

<sup>5</sup> *Parker v. Champerone*, p. 4.

The striking feature of these colonial cases is that the County Court did not follow the English common-law courts in enforcing the letter of the bond, but carried out the fair bargain between the parties as the Court of Chancery would have done. Thus in the case just described the court chancered the bond to £100, which comprised the £90 debt and £10 for interest. A large number of other cases of chancering are indexed under "Bonds." A few of these are especially interesting because they show the procedure employed. In *Leverett v. Wincoll*<sup>1</sup> the jury brought a verdict for forfeiture of a bond for £300. At the defendant's request the court heard both parties and chancered the forfeiture to £86 for reasons given in detail. In *Clarke v. Holmes*<sup>2</sup> the defendant neglected to ask for chancering in the County Court, and the verdict of the jury there for the full amount of the bond was confirmed by the jury in the Court of Assistants, but the bench in the Court of Assistants chancered the bond and greatly reduced the amount of the execution. Several petitions for chancering bonds are reprinted at length.<sup>3</sup> In *Porter v. Appleton*<sup>4</sup> we find the Court of Assistants chancering an arbitration bond, then setting aside its judgment and chancering it again for a lower amount.

The Massachusetts courts also recognized defenses to bonds which would not have been available in an English common-law court.<sup>5</sup> In *Hutchinson v. Paine*,<sup>6</sup> an action on a bond, the defense was that the terms of this sealed instrument had been modified by a subsequent unsealed agreement, which in England would have been wholly irrelevant in a common-law court. Yet the jury in the County Court treated it as a complete defense. On appeal, the jury in the Court of Assistants brought in a special verdict, leaving to the bench the equitable issue presented by the unsealed agreement (in accordance with the Jurors statute quoted above); the bench found the

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<sup>1</sup> Below, pp. 882-883.

<sup>2</sup> Below, pp. 1079-1080.

<sup>3</sup> *Frankes v. Rock*, at p. 1049; *Dudley v. Paige*, at pp. 1120-1121.

<sup>4</sup> Below, pp. 1137-1139.

<sup>5</sup> See Ames, "Specialty Contracts and Equitable Defences," *Harvard Law Review*, ix. 49.

<sup>6</sup> Below, pp. 530-536. See *Williams v. Woodbridge*, pp. 767-770, where the defendant unsuccessfully asserted that he was compelled by duress to sign the bond; this defense was probably available in an English common-law court. The same case discusses the assignability of bonds, under a statute, title Bills.

equitable defense good and upheld the decision for the defendant below. During the discussion in this case other equitable defenses to sealed instruments were mentioned, payment and fraud. The same case discusses the assignability of bonds under statute. In another bond action<sup>1</sup> we find equitable principles urged on behalf of the plaintiff. The defendants maintained that the bond was not proved since one attesting witness was dead and the other refused to appear. The plaintiff replied that the debt was justly due and that the defendants were endeavoring to make the court a patron of "their so great a peece of injustice & fraud."

Orders similar to injunctions, though not called by that name, were given in several cases. In *Deane v. Hubbard*<sup>2</sup> a *supersedeas* was issued to prevent the payment of a bill of exchange connected with an illegal transaction. During the settlement of an estate the tenant of a house was directed to pay no rent without order of court.<sup>3</sup> The Court of Assistants gave Hudson Leverett an order somewhat resembling an injunction for possession or a writ of assistance.<sup>4</sup> Roger Ross,<sup>5</sup> who was prosecuted for letting his well lie open so that people were exposed to danger, was ordered to make it safe or fill it up within a week, a rough equivalent of our injunction to abate a public nuisance. Several orders in criminal cases directing a man and woman to keep away from each other under penalty of a whipping<sup>6</sup> recall recent injunctions against illicit association.<sup>7</sup> In one case one such order was disobeyed by a man and a maid; he forfeited his bond and the girl's father was heavily fined.<sup>8</sup>

Sequestration appears in one case. An order was given to sequester all the property which Edward Naylor, a well-known reprobate, had received from his wife.<sup>9</sup> Possibly she had petitioned for divorce,<sup>10</sup> and the order was made in consequence.

<sup>1</sup> Stoughton v. Bishops, pp. 294-299.

<sup>2</sup> Below, pp. 788-791.

<sup>3</sup> Below, p. 885.

<sup>4</sup> Dowden, at p. 892. Compare Quincy's Reports, p. 537 and note.

<sup>5</sup> Below, p. 629.

<sup>6</sup> Hickson and Bedwell, pp. 442-443; Forrest and Julian Knight, p. 1161.

<sup>7</sup> *Ex parte* Warfield, 40 Texas Criminal Reports 413 (1899); Pound, Cases on Equitable Relief against Defamation (2d ed., 1930) 79 n.

<sup>8</sup> Belcher's Bond, p. 809; Spur, p. 810.

<sup>9</sup> Michelson v. Browne, p. 103. See also p. 442.

<sup>10</sup> Naylor's Petition, p. 96. See the discussion of Appellate Courts in this introduction.

Something very like specific performance of contracts occurred in several cases. Thus a defendant who had agreed to convey land was ordered to execute and deliver a sufficient deed or pay the plaintiff twenty pounds.<sup>1</sup> Another verdict called for a warranty deed or £100.<sup>2</sup> The lender of a Mercator's draft obtained a verdict that the borrower return a good Mercator's draft or pay a sum of money.<sup>3</sup> In an action of debt for 5,000 feet of pine boards to be delivered in Boston, the jury found for the plaintiff 5,000 feet of pine boards to be delivered in Boston in twenty-four hours, or in defect a sum of money.<sup>4</sup> Other verdicts resemble specific restitution in equity for torts. A man who had placed a fence across a passageway under the plaintiff's house was to remove the fence for a specified distance and in default thereof to pay twenty pounds.<sup>5</sup> A defendant who wrongfully kept the plaintiff out of possession of his half-interest in a vessel was to deliver one half the vessel or pay £70.<sup>6</sup>

Doubtless the analogy between the cases described in the preceding paragraph and English Chancery decrees must not be pressed too far. The Chancellor usually ordered the defendant to perform, and allowed no alternative except to go to prison for contempt. The Massachusetts verdicts, allowing an alternative money payment, come nearer to Coke's theory that a promisor has the option of performing or paying damages.<sup>7</sup> In the Mercator's draft case the sum of money clearly represented the plaintiff's estimate of the value of the article, and the verdict thus resembled an English judgment at law in an action of detinue. The pine boards case may be explained as an application of the statute, title Payments, "That all Contracts . . . shall be satisfied in kinde according to Covenant. . . ; Provided that in such cases where payment in kinde is not made according to the Covenant, all just damages shall be satisfied (together with the Debt) for not paying in kinde according to bargain." The money alternative in this case may represent the value of the boards and compensation for delay rather than a penalty for disobedience of the order to perform.

<sup>1</sup> Baker v. Johnson, p. 392.

<sup>2</sup> Thayer v. Paine, pp. 563-564; see also Billing v. Rawson, p. 819.

<sup>3</sup> Atherton v. Lockwood, pp. 512-513.

<sup>4</sup> Davie v. Hall, pp. 875-876.

<sup>5</sup> Skinner v. Lowell, pp. 388-392.

<sup>6</sup> Greely v. Hall, pp. 988-989.

<sup>7</sup> Bromage v. Genning, 1 Roll. R. 368 (1616).



In the land cases we have no way of knowing whether the money alternative represented the value of the land which the defendant failed to convey. If so, these cases may also fall under the Payments statute and resemble judgments for damages coupled with an opportunity to perform the promise. On the other hand, if the money alternative exceeded the value of the land, it may well have been a penalty for disobedience of the order to convey. There was no absolute rule in England that imprisonment was the only penalty for disregard of the orders of Chancery. The early subpoenas specified a money penalty,<sup>1</sup> and the earliest English decree for specific performance does not describe the penalty at all.<sup>2</sup> At all events, the conclusion seems warranted that the Massachusetts courts felt the necessity of doing more to compel specific performance and restitution than an English law court would do, even though the colonial courts did not give precisely the same relief as the English Chancery or impose so much pressure to bring about obedience to orders.

Trusts were not unknown in Massachusetts at this time. *Cooke v. Broughton*<sup>3</sup> is a complex case growing out of a deed in trust for creditors drawn by a skilled conveyancer, which was eventually set aside and which involved the trustees in protracted claims for reimbursement of outlays and other litigation. Another trust of land is mentioned<sup>4</sup> and a trust of personal property.<sup>5</sup> Feoffees under a charitable trust for the Roxbury Free School sued to obtain possession of part of the trust property.<sup>6</sup> Executors in trust sued for an accounting of a vessel.<sup>7</sup> The technical phrase "to the uses" appears only once, perhaps in connection not with a trust but with an agency.<sup>8</sup> In three cases it is not certain whether the relation was trust or bailment, probably the latter.<sup>9</sup>

Thus these records offer considerable evidence to support the con-

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<sup>1</sup> Baildon, *Select Cases in Chancery*, p. xiv.

<sup>2</sup> *Cokayn v. Hurst* (1458), in Baildon, *Select Cases in Chancery*, No. 143.

<sup>3</sup> Below, pp. 65-78.

<sup>4</sup> *Cutler v. Cutler*, p. 881.

<sup>5</sup> *Aspinwall v. Evans*, p. 981.

<sup>6</sup> *Parke v. Morrise*, pp. 463-464. On the affairs of this charitable trust, see *Massachusetts Bay Records*, iv (II). 434, 441, 455-458; v. 5, 22.

<sup>7</sup> *Alford v. Endicott*, pp. 726-735.

<sup>8</sup> *Lamb v. Williams*, p. 1051.

<sup>9</sup> *Fowle v. Stevens*, p. 854; *Aldredge v. Stevens*, p. 854; *Wilcocks v. Viall*, p. 855.

clusions of other writers<sup>1</sup> that the absence of a Court of Chancery did not prevent the existing Massachusetts courts from granting relief of an equitable nature. Most of the cases cited by these writers were in the General Court; these volumes prove that the County Courts also had and exercised equitable powers. However, their powers were apparently insufficient to satisfy the needs of litigants, for in 1685 a statute was enacted, which declared that experience had shown that in many cases where there was matter of apparent equity, there was "no way provided for releife against the rigour of the common law" except by application to the General Court where great delays were suffered because of the pressure of public affairs; consequently the magistrates of each County Court were empowered to act as a Court of Chancery.<sup>2</sup>

### SLANDER AND LIBEL

We pass now from procedural topics to substantive law, and begin with the treatment of torts.

Slander was the commonest tort to appear in these cases. Most of the statements for which action was brought charged the plaintiff with some offense,<sup>3</sup> such as perjury, theft, drunkenness, or treason. Other attacks on personal reputation involved unchastity<sup>4</sup> and venereal disease.<sup>5</sup> A few statements affected business interests, questioning the plaintiff's credit,<sup>6</sup> or alleging that he adulterated the wine he sold.<sup>7</sup>

An action for libel<sup>8</sup> is the only case which suggests any of the numerous modern defenses for defamation. Captain Scottow, in command of a Maine fort during King Philip's War, was charged with dereliction of duty by a petition sent to the General Court from several settlers on the Maine coast. Scottow brought "an action of the case

<sup>1</sup> Note by Gray in Quincy's Reports, p. 537; Woodruff, "Chancery in Massachusetts," *Law Quarterly Review*, v. 370, reprinted, with additional material, in *Boston University Law Review*, ix. 168.

<sup>2</sup> Massachusetts Bay Records, v. 477-478.

<sup>3</sup> *Baker v. Joy*, p. 134; *Bennet v. Gridley*, p. 744; *Sedgwick v. Rock*, pp. 770-771; *Burnes v. Harwood*, p. 984; *Smith v. Cartwright*, p. 10; *Tay v. Hawkins*, p. 688; *Griggs v. Chock*, p. 1042; *Fogg v. Leverett*, p. 689.

<sup>4</sup> *Marsh v. Machee*, p. 43; *MackDaniel v. Hale*, p. 818.

<sup>5</sup> *Keen v. Wiswall*, p. 1039.

<sup>6</sup> *Legg v. Flood*, p. 880.

<sup>7</sup> *Clarke v. Kent*, pp. 908-909.

<sup>8</sup> *Scottow v. Shapleigh*, pp. 1108-1116.



of defamation" against the petitioners, who obtained a verdict below. In their successful answer to Scottow's appeal, they urged in effect that their petition to the General Court was a privileged communication which they were in duty bound to make.

The nature of the remedy given for slander is very interesting. As an alternative to the payment of damages the slanderer was often ordered by the jury to make an acknowledgment of the untruth of his statement. Usually this retraction was to be made in open court, but in one case it had to be repeated in a public town meeting.<sup>1</sup> In an instance where the slander occurred in Stonington, Connecticut, the defendant was ordered to file a written apology in the Suffolk County Court and also to furnish proof that he had made a similar acknowledgment of his wrong at Stonington.<sup>2</sup> Obviously a public retraction does much more than money to restore the plaintiff's reputation.<sup>3</sup> The law of Continental Europe permits the court to require an apology from the defamer.<sup>4</sup> The similar remedy in the Suffolk County Court may have been borrowed from the practice of the English ecclesiastical courts.<sup>5</sup> Unfortunately, this sensible course of ordering a public retraction is no longer available in Massachusetts;<sup>6</sup> our ancestors were more enlightened than ourselves.

Defamatory utterances sometimes gave rise to prosecutions as well as to tort actions. Although the English criminal law in the latter part of the seventeenth century did not include spoken defamation,<sup>7</sup> slander had been a crime in England when Massachusetts was settled,<sup>8</sup> so that it is natural to find it punished by the colonists, especially as some of the persons defamed occupied official positions. Thus Hoare and Rogers were fined for abusing the clerks of the market, and Hoare in addition had to pay ten pounds to the clerks or make a

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<sup>1</sup> *Smith v. Cartwright*, p. 10. Retractions were ordered in the cases cited in notes 1-4, except *Bennet v. Gridley*, *Tay v. Hawkins*, and *Fogg v. Leverett*.

<sup>2</sup> *Danson v. Ellitt*, p. 1123.

<sup>3</sup> See the Hindoo's comment on the English remedy of damages quoted from Kipling by Pound, "Interests of Personality," *Harvard Law Review*, xxviii. 446 n.

<sup>4</sup> *Id.*, pp. 364, 449.

<sup>5</sup> Burn, *Ecclesiastical Law* (9th ed., 1842) II. 137-138. This reference was supplied by Dean Pound.

<sup>6</sup> *Finnish Temperance Society v. Raivaaja*, 219 Mass. Reports 28 (1914).

<sup>7</sup> *Rex v. Penny*, 1 Lord Raymond 153 (1697).

<sup>8</sup> Holdsworth, *History of English Law*, v. 211.

retraction in open court.<sup>1</sup> This shows that torts and crimes still overlapped. Reviling ministers was more than slander, it was heresy by statute.<sup>2</sup> Veering was sentenced to a whipping and public disgrace for abusing his wife, his minister, and church members; but by petitioning and making an acknowledgment in open court he got off with a heavy fine and a bond for good behavior.<sup>3</sup> Wharton, a notorious attorney, was convicted under the heresy statute for accusing three of Governor Bellingham's executors, including the same minister, of altering the Governor's will. He was put under bonds for good behavior and for his appearance to prosecute this charge against the executors.<sup>4</sup> Later he was committed to prison for repeating his charge in open court.<sup>5</sup> When the time came for Wharton to prosecute his charge, he refused, and the court put him under much heavier bonds.<sup>6</sup>

Libel, unlike slander, is a generally recognized crime still punishable in Massachusetts.<sup>7</sup> But modern conceptions of freedom of speech make it impossible to bind over libellous writers to keep the peace,<sup>8</sup> as was done by the colonists to two men who set up libels at their victim's door,<sup>9</sup> and to Dr. Couch, who made verses reproaching Governor Bellingham and the ministers.<sup>10</sup> Stretton and Kemble were admonished for writing defamatory letters at the dictation of Alice Wright.<sup>11</sup>

#### NEGLIGENCE

Negligence overshadows all other torts today, but the law on this subject did not take shape until the nineteenth century.<sup>12</sup> Before then the minds of judges and lawyers seem confused on the question of liability for unintentional injuries to the person or property of another, and it is not wholly clear whether they thought that compensation had to be given although the defendant was wholly without blame for the accident. Still, the earlier English reports occasionally mention

<sup>1</sup> Below, pp. 992-993.

<sup>2</sup> See below, p. 228 *n*.

<sup>3</sup> Below, p. 231; see also Sprague, p. 424.

<sup>4</sup> Below, pp. 228-229.

<sup>5</sup> Below, p. 232.

<sup>6</sup> Below, pp. 237-238; see Bellingham v. Smith, p. 248.

<sup>7</sup> Commonwealth v. Canter, 269 Mass. Reports 359 (1929), discussed in Harvard Law Review, XLIII. 663-664.

<sup>8</sup> Pound, Cases on Equitable Relief against Defamation (2d ed., 1930), p. 13 *n*.

<sup>9</sup> Wainwright, p. 225.

<sup>11</sup> Below, p. 753.

<sup>10</sup> Below, p. 235.

<sup>12</sup> Holdsworth, History of English Law, VIII. 449-459.

negligence. Thus in one of Coke's books which the General Court bought in 1647,<sup>1</sup> Coke, writing in 1601, speaks of an action on the case against a shepherd who negligently let sheep be drowned. It is not, therefore, unexpected to find suits for carelessness in seventeenth-century Massachusetts, but six suits within ten years in Suffolk County is a surprisingly large number when we recall the scarcity of negligence cases in the English books of the time.

All these actions involved marine accidents. A seaman was sued for his carelessness in keeping no watch aboard a vessel which caught fire and was totally burned; the jury found for the seaman.<sup>2</sup> Captain Harbour was found liable for running down with his sloop a fishing shallop at anchor.<sup>3</sup> A bricklayer was unsuccessfully sued for building a hearth on a ketch so badly that damage was caused by fire.<sup>4</sup> Negligence in the performance of a contract was also involved in another case. The owner of goods shipped from England on the ketch *Diligence* sued Palmer, the master, for cargo damages caused, so the plaintiff said, either by unseaworthiness of the ketch or by "Negligence of the Said master & Seamen." An old seaman who was a passenger on the voyage testified that the ketch had gone through "the dreadfulest Storme that ever J was in Since J was borne," giving vivid details which doubtless persuaded the jurors to find Captain Palmer not liable.<sup>5</sup>

Captain Chantrell of the ketch *True Love* was less fortunate. One dark night off Cape Cod he ran down the fishing shallop *Hopewell* at anchor with the loss of two fishermen's lives, the shallop, and all the gear. There were ugly rumors of a bowl of punch aboard the *True Love*. Criminal proceedings were instituted before the Court of Assistants, which sentenced Captain Chantrell and his crew to an admonition, and left the victims to their civil remedies. Accordingly, the master of the fishing shallop brought an action on the case against Chantrell for the value of the shallop, gear, and fish, with an added claim for the loss of the use of his vessel at the height of the fishing season; and recovered over forty pounds.<sup>6</sup>

<sup>1</sup> *Countess of Shrewsbury's Case*, 5 Coke Reports 13. On the purchase of law books, see Sources of Law in this introduction.

<sup>2</sup> *Milton v. Elliott*, p. 3.

<sup>3</sup> *Clarke v. Harbour*, pp. 736-737.

<sup>4</sup> *Yardley v. Boden*, p. 775.

<sup>5</sup> *Sheafe v. Palmer*, pp. 829-830.

<sup>6</sup> *Woode v. Chantrell*, pp. 159-163.

Then followed one of the most interesting cases in this book, despite its disappointing brevity. The widow of Snelling, one of the drowned fishermen, sued Captain Chantrell for causing the death of her husband with the loss of all his property, whereby she and her children would be thrown on the town.<sup>1</sup> Here is an early instance of an action for wrongful death. The English courts refused to entertain such actions. All sorts of senseless reasons were given, for instance, that it was impossible to place any value upon the life of a man. The true reason was that homicide was a crime, and private suits for crime might lead to the suppression of prosecutions. In crimes other than homicide a private suit was permitted after a prosecution had been instituted. In the case of homicides, the English law gave a peculiar remedy for the benefit of the heir or widow of the dead victim, called an appeal; the defendant in such a proceeding had a right to claim trial by battle. As late as 1818 this privilege was asserted, to the great discouragement of the bereaved family. Parliament consequently abolished the appeal in 1819, and England thereafter gave no opportunity to obtain compensation for wrongful death until the number of fatal railroad accidents excited public opinion and brought about Lord Campbell's Act in 1846, which provided a statutory action for the widow or children of the victim against the negligent killer. All of the United States, including Massachusetts,<sup>2</sup> have such a statutory remedy. But these statutes sometimes fail to cover all kinds of wrongful death, and the courts still deny compensation unless a statute is applicable, thereby causing outrageous denials of justice.<sup>3</sup>

The only Massachusetts statute on compensation for wrongful death at the time of the widow Snelling's suit was limited to deaths on defective highways and bridges, for which the town, if previously notified of the defect, had to pay a fine of £100 to the parents, spouse, children, or next of kin of the victim.<sup>4</sup> Consequently, Mrs. Snelling

<sup>1</sup> *Snelling v. Chantrel*, p. 166.

<sup>2</sup> See Hay, "Death as a Civil Cause of Action in Massachusetts," *Harvard Law Review*, VII. 170.

<sup>3</sup> *Admiralty Commrs. v. The Amerika*, 1917 A. C. 38 — marine accident; *Panama Railroad v. Rock*, 266 United States Reports 209 (1924) — accident in the Canal Zone. See the adverse criticism of these decisions in *Harvard Law Review*, xxx. 742; xxxviii. 499. Negligent death at sea is discussed by White-lock, "Extra-territorial Marine Torts," *id.*, xxii. 403.

<sup>4</sup> Title Bridges, Whitmore, Colonial Laws, 1672-1686, p. 12, enacted in 1648.



had to rely on some common-law right. The argument against such a right, that civil suits would tend to suppress prosecutions, did not apply to her because the Court of Assistants had already entertained a prosecution and expressly referred the parties damnified by the collision "to their legal advantages."<sup>1</sup> If the jury had only decided in the widow's favor, we should have a telling precedent for liability for wrongful death without any statute. Unluckily, the jury found against the widow and gave no reasons for the verdict. We do not know whether the jurors consciously followed the English doctrine denying ordinary civil remedies, or whether they now thought there was no negligence, although a short time before these same jurors had held the master liable for the property losses growing out of the disaster. The widow Snelling did not appeal, perhaps because she was too poor, so that we have no Reasons of Appeal or Answer to reveal contemporaneous thought on civil actions for wrongful death.

Even though no civil action lay, the family of the dead victim might hope for compensation as a by-product of a successful prosecution for criminal negligence. This possibility was of no use to the widow Snelling, for the prosecution of the careless captain and crew led only to admonitions. Another case throws more light on this remedy. Stuart, the master of a sloop, and Ludden, probably a seaman, were prosecuted for their carelessness in rigging tackle so that the boom fell, killing Williams and wounding Pegg. The County Court sentenced the defendants to pay £20 to the widow Williams and £10 to Pegg. On appeal, the sentence was reversed, perhaps because the Court of Assistants thought negligence not proved. Both sides presented interesting arguments, relying on statutes, common law, and the Bible. One argument by the defendants was that the injured persons should have brought civil actions.<sup>2</sup>

The unsoundness of this contention that the victims of negligence should not be compensated in the course of a criminal case appears to be established by several prosecutions for criminal negligence which did not result fatally. Hurlo had to pay for curing an Indian whom he had accidentally wounded.<sup>3</sup> Fuller, a servant, on accidentally shooting another servant, Barnes, was sentenced to take care of the surgeon's bill, compensate Barnes for his permanent injuries, and pay Barnes's master for the loss of services. If Fuller's master refused to bear this heavy expense, Fuller was to be sold to cover it.<sup>4</sup>

<sup>1</sup> Below, p. 160.    <sup>2</sup> Below, pp. 404-408.    <sup>3</sup> Below, p. 149.    <sup>4</sup> Below, p. 644.

Newcomb, who sank a boat in Boston harbor, was ordered to compensate the victims of the collision besides paying a fine to the county. His sentence was confirmed on appeal, despite his interesting argument.<sup>1</sup> Newcomb afterwards obtained contribution from a joint wrongdoer.<sup>2</sup>

The close relationship then existing between torts and crimes is illustrated in a different way by other negligence prosecutions, where the court merely levied a fine for the benefit of the county and left the victim "to his due course in law" against the wrongdoer.<sup>3</sup> Some cases of criminal negligence make no reference to compensation of the injured persons.<sup>4</sup>

### OTHER TORTS

Many torts besides slander and negligence are represented in these pages. Indeed, it is possible that the absence of standardized writs and the cheapness of litigation promoted a greater variety of tort actions than in the English common-law courts.

Among torts to property, trespass to real estate and the misappropriation of chattels have already been discussed.<sup>5</sup> Other cases on chattels involved wounding or killing horses;<sup>6</sup> sheep worried by dogs;<sup>7</sup> destroying leather;<sup>8</sup> the improper retention of a drifting boat and an anvil;<sup>9</sup> the bucolic controversy over Waldron's cattle;<sup>10</sup> the removal of household goods to avoid seizure by the Indians;<sup>11</sup> and breaking open a chest so that clothes, account books, and documents were lost.<sup>12</sup> Miscellaneous injuries to real estate included disturbance of a right of way;<sup>13</sup> polluting a well;<sup>14</sup> and letting a vessel break a wharf-railing.<sup>15</sup> Henry Ashton, after his adventurous voyage on the *Recovery*, got into further difficulties by occupying a house which

<sup>1</sup> Below, pp. 695-697.

<sup>2</sup> *Newcomb v. Wardell*, p. 800.

<sup>3</sup> *Lorin*, pp. 332-333; *Dare*, p. 333.

<sup>4</sup> *Whitwell*, p. 258; *Gatch*, p. 259; *Wakefeild*, p. 785.

<sup>5</sup> See *Forms of Action*, in this introduction.

<sup>6</sup> *Crowne v. Sprague*, p. 156; *Sandford v. Orchard*, pp. 669-671; see also *Toy v. Howard*, p. 130.

<sup>7</sup> *Harris v. Bridgeham*, p. 277.

<sup>8</sup> *Gilbert v. Obison*, pp. 738-742.

<sup>9</sup> *Scarlett v. Long*, *Salter v. Manning*, p. 584.

<sup>10</sup> Below, pp. 759-766.

<sup>11</sup> *Norman v. Skinnar*, pp. 803-806.

<sup>12</sup> *Acorman v. Valentine*, pp. 982-983. For cases involving chattels in New York, see pp. 385-387, 856-857.

<sup>13</sup> *Skinner v. Lowell*, pp. 388-392.

<sup>14</sup> *Phillips v. Wharton*, p. 420.

<sup>15</sup> *Salter v. Rose*, p. 984.



was said to be given to the owner's sureties to indemnify them; they sued Ashton unsuccessfully for taking away their security.<sup>1</sup> A different kind of loss of security appears in suits by creditors against the keeper of the jail for permitting prisoners to escape.<sup>2</sup>

Personal injuries were asserted, such as assault and battery,<sup>3</sup> false imprisonment,<sup>4</sup> and the novel tort of unjust molestation, which was rather indefinite in its nature and sometimes described injuries to property.<sup>5</sup> Another queer tort was telling the prison-keeper to make the plaintiff work.<sup>6</sup>

Intermediate between injuries to property and person are wrongs involving the plaintiff's family and servants. A father recovered for the seduction of his daughter,<sup>7</sup> a master for the detention of a negro slave boy,<sup>8</sup> and other masters for the abduction or detention of Indian servants.<sup>9</sup>

### REAL PROPERTY

The conveyance of land and houses was required, by a statute of 1652 continued in the revisions of 1660 and 1672,<sup>10</sup> to be made only by deed in writing; yet livery of seisin after 1652 appears in four cases.<sup>11</sup> Entails were permitted by statute, and are occasionally mentioned.<sup>12</sup> The only references to future interests other than entails are to a deed of gift creating a remainder after a life-estate, and to a testamentary perpetual charge on land for the benefit of Harvard College.<sup>13</sup>

The statutes, title Conveyances, Deeds, and Writings, required

<sup>1</sup> Bartholmew v. Ashton, p. 318. See Litigiousness, in this introduction.

<sup>2</sup> Norman v. Salter, p. 131; Scottow v. Felton, pp. 317-318.

<sup>3</sup> MackDaniel v. Hale, p. 818.

<sup>4</sup> Ashton v. Gibbs, pp. 347-358; Edsall v. Johnson, p. 639.

<sup>5</sup> Kelly v. Blower, p. 13; Francks v. Ely, p. 135; Dudson v. Darvall, pp. 385-387. Several instances of the same tort are given in Maine Province and Court Records, indexed under Crimes and Torts.

<sup>6</sup> Jones v. Neylor, 471.

<sup>7</sup> Stanton v. Trott, 242.

<sup>8</sup> Keen v. Blighe, p. 159.

<sup>9</sup> Sweete v. Gibbs, pp. 742-743; Danson v. Elliott, pp. 1086-1092.

<sup>10</sup> Title Conveyances, Deeds and Writings, sec. 1, emphasized in Patten v. Winsley, at p. 381.

<sup>11</sup> Cooke v. Broughton, at p. 66 (transaction in 1659); Clarke v. Nicholls, p. 99 (in 1673); Mead and Alcock, p. 456 (in 1673/4); Salter v. Checkley, at p. 580 (in 1674/5).

<sup>12</sup> Title Conveyances, etc., sec. 2; Clarke v. Nicholls, at p. 99; Rawson v. Billings, at p. 546.

<sup>13</sup> Bundy v. Tomlin, pp. 210-211; Glover Estate, at pp. 428-429.

deeds to be recorded, contrary to the practice in most parts of England,<sup>1</sup> and made unrecorded deeds invalid unless the grantee was in possession. Such land records were used in court in one case.<sup>2</sup> *Leverett v. Bullis*<sup>3</sup> is a complicated real property case which discusses the effect of this statute and also the rights of a purchaser who paid for land without taking title.

Contracts to sell land appear in other cases. In one<sup>4</sup> the seller gave a bond to convey, and in another<sup>5</sup> he did not convey all he had promised. Suits for something like specific performance are discussed under Equity. *Gilbert v. Greenleafe*<sup>6</sup> contains the interesting argument that the Massachusetts law required "contracts for houses or land" to be written and under seal. This was in 1675 before the English Statute of Frauds.<sup>7</sup> No colonial statute nullifying oral *contracts* for the sale of land has been found, and probably the argument was trying to stretch the statutory requirement<sup>8</sup> that writing was necessary to *convey* land.

Possession was naturally important among early settlers, and the statute on this subject was much discussed in two cases.<sup>9</sup>

Other interesting real estate cases concern a settler's right in town commonage,<sup>10</sup> a grant by the inhabitants of a town,<sup>11</sup> a seller's refusal to give up documents connected with the land sold,<sup>12</sup> a sale by a married man without release of dower,<sup>13</sup> and a seller's failure to give a good title.<sup>14</sup>

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<sup>1</sup> J. H. Beale, "The Origin of the System of Recording Deeds in America," *Green Bag*, xix. 335.

<sup>2</sup> *Cutler v. Cutler*, p. 881.

<sup>3</sup> Below, pp. 860-862.

<sup>4</sup> *Boseworth v. Morse*, pp. 100-101.

<sup>5</sup> *Hiskett v. Paine*, p. 318.

<sup>6</sup> Below, p. 567.

<sup>7</sup> 29 Charles II c. 3, sec. 4 (1677). This did not apply in a colony unless expressly received there by act of assembly or usage. See 25 Geo. II c. 6, sec. 10 (1752).

<sup>8</sup> Title Conveyances, Deeds and Writings, sec. 1. "Sale" as used here does not include a contract to sell.

<sup>9</sup> *Woody v. Harrison*, pp. 651-656; *Leverett v. Bullis*, pp. 860-862.

<sup>10</sup> *Tower v. Hobart*, pp. 507-508; *Harrison v. Woddee*, p. 528.

<sup>11</sup> *Cutler v. Jacob*, p. 530.

<sup>12</sup> *Sheffield v. Harrison*, p. 529.

<sup>13</sup> *Order to Joyliffe*, p. 755.

<sup>14</sup> *Walker v. Ellis*, p. 823; *Addams v. Jay*, p. 1052.

Mortgages were foreclosed by an action on the case for not giving possession to the plaintiff mortgagee.<sup>1</sup> One case involved the exoneration of a mortgage.<sup>2</sup>

Among numerous disputes between landlord and tenant, one concerned permissive waste,<sup>3</sup> and another the ever-present desire of a tenant to stop paying rent when his landlord has broken a covenant in the lease.<sup>4</sup>

Several cases of decedents' estates involve real property problems, especially *Salter v. Checkley*,<sup>5</sup> which discusses principles of the construction of deeds, the statute on Conveyances, and the law of cotenancy.

### DECEDENTS' ESTATES

The orders of the County Court for the settlement of estates occur too frequently for detailed discussion. Many of them resemble the activities of a modern probate court, although the procedure was more informal in the seventeenth century. In order to facilitate settlement, officials were appointed who are unknown to our practice, such as committees, overseers, and assistants to elderly widows who found their own duties too burdensome.

Wills were simpler than today in their provisions, though often more detailed in describing the shares of the legatees. The Glover will charges real estate with an annual payment of five pounds to Harvard College forever.<sup>6</sup> Devout preambles are an interesting feature of several of the wills here reprinted.<sup>7</sup> Nuncupative wills (orally made in the presence of witnesses) are frequently mentioned.<sup>8</sup> In one case the court orders a distribution which it finds was the "mind of decedent as shown by testimony."<sup>9</sup> Obviously the proof

<sup>1</sup> *Sheafe v. Hawkins*, pp. 1-3, continued on pp. 275-277, 564-565, 684, 705-706; *Deane v. Gibbs*, p. 725; *Allen v. Emmons*, p. 772; *Stoughton v. Gilbert*, p. 772; *Tompson v. Simons*, p. 909; *Sheafe v. Salter*, p. 1085.

<sup>2</sup> *Smith to Jones*, p. 1026.

<sup>3</sup> *Hudson v. Daniel*, p. 776.

<sup>4</sup> *Hill v. Obbinson*, pp. 1094-1095.

<sup>5</sup> *Below*, pp. 579-583.

<sup>6</sup> *Below*, pp. 426-429.

<sup>7</sup> *Widow Bridgham*, pp. 132-133; *Governor Bellingham*, pp. 230-231; *Glover*, pp. 428-429; *widow Ward*, pp. 1032-1033.

<sup>8</sup> *Patten v. Dyer*, at p. 374; *Patten v. Winsley*, pp. 381-383; *Holowells v. Butler*, pp. 1029-1037.

<sup>9</sup> *Phippen Estate*, p. 996.

of the contents and execution of wills was loose. No formalities for execution seem to have been prescribed by law. The statutes<sup>1</sup> merely talk about "wills" without saying that they must be in writing or signed or witnessed. The wills here reprinted were signed, but two were not witnessed. Glover's will has one witness, and the widow Ward's has four. This absence of formal requirements is natural when we recall that the first English statute to require wills of land to be signed and witnessed was enacted in 1677,<sup>2</sup> well on in the period covered by these cases; and that wills of personalty might be unwitnessed in England until 1837.<sup>3</sup>

The distribution of intestate property was left almost as indefinite as the matter of wills by the Massachusetts statutes of our period. They provided that the County Court at the intestate's last residence should have power to assign "such a part of his estate" to the widow "as they shall judge just and equal" and also to assign "to the Children or other Heires" their several portions.<sup>4</sup> Nothing is said to show what rules should be employed to determine who were heirs. The statute goes on to give the eldest son a double portion, and distributes the rest equally among the other children. Many cases in this book<sup>5</sup> show the statutory rule in operation, the eldest son taking a double portion and daughters sharing equally with the younger sons.<sup>6</sup>

<sup>1</sup> Whitmore, *Colonial Laws, 1672-1686*, pp. 32, 157-158.

<sup>2</sup> Statute of Frauds, 29 Charles II c. 3 sec. 5. This did not apply to the colonies, except as they accepted it.

<sup>3</sup> Wills Act, 7 William IV & 1 Victoria, c. 26.

<sup>4</sup> Title Wills, sec. 3, Whitmore, *Colonial Laws, 1672-1686*, p. 158. The statute was apparently enacted in this form in 1649, for the intestacy statute of 1641 (see *Liberties* 81, 82), incorporated in the *Laws and Liberties* of 1648, pp. 53-54, lacks these provisions, and merely specifies the rule for division among children which also appears in the revisions of 1660 and 1672 and is explained in the text. In England the distribution of personal property was not regulated by statute until 1670.

<sup>5</sup> Examples are: *Lorine Est.*, p. 119; *George Est.*, p. 223; *Marshall Est.*, pp. 225-226; *Phippen Est.*, p. 996; *Gallop Est.*, pp. 1015-1016; *Clement Est.*, p. 1017; *Winslow Est.*, p. 1067; *Ward Est.*, pp. 1069-1070; *Blackman Est.*, p. 1165; *Clap Est.*, pp. 1167-1168.

<sup>6</sup> It is arguable that the statutory clause, "where there are no Sons, the daughters shall inherit as Copartners," gave the daughters nothing when there were sons. This would correspond to the division of land only among sons under the English custom of gavelkind, discussed below. But the cases in this book indicate no such discrimination against daughters. Every case cited in the



The same rule of division among children continued in Massachusetts until 1789 and also prevailed in Connecticut. The origin of this marked departure from English law raises interesting problems.<sup>1</sup> In England the children shared equally in an intestate's personal property, and normally all his land descended to his eldest son by primogeniture. However, some regions had other customs as to the descent of land. Notably in parts of Kent by the custom of gavelkind all the sons of the intestate shared his land equally, but the daughters still received none unless they had no brothers. Gavelkind was sometimes, though not always, an incident of tenure by free and common socage,<sup>2</sup> which prevailed widely in Kent and was less burdened with feudal incidents than tenure by knight-service and other military tenures. The Long Parliament abolished military tenures and other antiquated feudal burdens.<sup>3</sup> This reform was partially re-enacted after the Restoration, and all tenures were turned into free and common socage.<sup>4</sup>

What bearing has all this on the provision of the Massachusetts Bay charter of 1628/9, by which the King granted part of New England to the incorporators "To be houlden of us . . . as of our Mannor of Eastgreenwich, in the County of Kent, in free and common Soccage, and not in Capite, nor by Knightes Service"?<sup>5</sup> Did the

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preceding note gives equal portions to all children except the eldest son. To explain this result on the ground that there were only boys in ten families, several of them numerous, would outrage the law of probabilities. Indeed, Clap's Estate, pp. 1167-1168, expressly mentions a daughter as well as sons. In the Probate Records of Essex County during our period, cases have been noted of daughters sharing with sons (II. 258, 271, 279, 284-285, 307-308).

<sup>1</sup> Andrews, "The Influence of Colonial Conditions as Illustrated in the Connecticut Intestacy Law," *Select Essays in Anglo-American Legal History*, I. 431 ff.; Morris, "Massachusetts and the Common Law," *American Historical Review*, xxxi. 447-448, referring to Deuteronomy, xxi: 15-17, and questioning some statements of Andrews.

<sup>2</sup> Blackstone, *Commentaries*, II. 79-89, 216.

<sup>3</sup> Robinson, "Anticipations under the Commonwealth of Changes in the Law," *Select Essays in Anglo-American Legal History*, I. 488-490.

<sup>4</sup> St. 12 Charles II c. 24 (1660).

<sup>5</sup> Poore, *Federal and State Constitutions, Colonial Charters, etc.*, I. 933. See also, the Plymouth Charter of 1620, *id.*, I. 926; the Provincial Charter of 1691, *id.*, I. 947; E. P. Cheyney, "The Manor of East Greenwich in the County of Kent," *American Historical Review*, xi. 29; V. F. Barnes, "Land Tenure in English Colonial Charters of the Seventeenth Century," in *Essays in Colonial History Presented to Charles M. Andrews*, p. 4; Morris, *Studies in the History*



charter mean to introduce gavelkind? Probably not. The general establishment of free and common socage in England under Charles II did not end primogeniture. The mention of the manor of East Greenwich adds nothing, unless it can be shown that gavelkind was a custom of this Kentish manor, a question that deserves investigation. References to this manor, a favorite residence of the Tudor sovereigns, were common in sixteenth-century royal grants of English lands in order to make it absolutely plain that they were free from the burdens of military tenures; and the phrase would be naturally used in colonial charters for the same purpose. It is significant that the East Greenwich clause in the Virginia charter of 1606 <sup>1</sup> did not prevent primogeniture in Virginia until Jefferson brought about its abolition.

At all events the Massachusetts colonists did not observe primogeniture, but neither did they observe gavelkind. They differed from gavelkind by letting daughters share with sons and by giving the eldest son a double share, a sort of compromise with primogeniture. They also departed from English law by combining the land and personal property of the intestate in one indiscriminate mass. The charter provision probably contributed to the express statutory prohibition of feudal burdens.<sup>2</sup> Whether it also influenced the descent of land is uncertain. One of the cases in this book cites the free and common socage clause of the charter on a question of inheritance.<sup>3</sup>

The indefiniteness of the colonial statute as to intestate distribution was not likely to create trouble when the only claimants to the decedent's property were his widow and her children. After the County Court had decided what she needed, everybody would usually be, as one case says, "well Satisfied."<sup>4</sup> The court appears to have performed simple divisions wisely. For example, we find it making special provision for a feeble-minded daughter.<sup>5</sup>

Nevertheless, friction sometimes occurred. Widows often married

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of American Law (1930), pp. 103-120; and the report of the 1695 survey of the royal manor of East Greenwich in Kimbell, *An Account of the Legacies, etc., of the Parish of St. Alphege Greenwich* (1816), pp. 183 ff.

<sup>1</sup> Macdonald, *Select Charters, 1606-1775*, p. 10.

<sup>2</sup> *Liberty No. 10* (1641), Whitmore's *Bibliographical Sketch*, p. 35; title *Lands, free Lands, Colonial Laws, 1672-1786*, p. 88.

<sup>3</sup> *Patten v. Winsley*, at p. 381.

<sup>4</sup> *George Estate*, p. 223.

<sup>5</sup> *Pratt Estate*, p. 716.

again in a short time, women being scarce, and this was likely to produce controversies between the new husband (who legally took over his wife's property) and his step-children or other relatives of his predecessor.<sup>1</sup> And the mother-in-law problem was not unknown.<sup>2</sup> Even mothers sometimes had grounds for complaint against their own children. The widow Burnell had to excite considerable judicial pressure to make her son readmit her to her old home and provide adequately for her support out of his father's estate.<sup>3</sup>

The interests of minor children were sometimes safeguarded by an order that the widow or her new husband should give a bond that the children would receive their shares either when they came of age or on termination of the widow's life interest. These bonds served somewhat the same function as a modern testamentary trust.

Distribution among heirs became especially difficult when there were no children. Thus in the long litigation over the Patten estate<sup>4</sup> the decedent's brother, claiming to be heir by English law, objected to the decisions of the County Court as unduly favorable to the widow and to Beale, an informally adopted nephew. An interesting question arose, whether the power of the County Court, under the statute, to set off part of the decedent's estate to the widow was limited to personal property so that she could get no real estate except her dower. The power was held to include real estate, contrary to English law. The General Court then partitioned the rest of the land between the English heir and Beale, but their controversy continued in a new form.

Other interesting litigations over intestate or testate property were *Holowells v. Butler*,<sup>5</sup> in which rules of heirship were quoted from the Bible in an effort to prevent a widow from leaving her husband's property to her side of the family; the Douglas settlement,<sup>6</sup> involving the question whether the property which a deceased child had inherited from his father should descend only to his father's relatives or also be shared by his mother's relatives; *Leverett v. Bullis*,<sup>7</sup> about the Paddy estate, regarding the powers of an executor and

<sup>1</sup> *Clarke v. Nicholls*, pp. 5-9, 98-99; *Clarke v. Lamb*, pp. 1131-1136.

<sup>2</sup> *Simpson v. Salter*, pp. 1040-1041.

<sup>3</sup> *Below*, pp. 1064, 1096-1097.

<sup>4</sup> *Patten v. Dyer*, pp. 373-376; *Patten v. Winsley*, pp. 377-384; *Salter v. Checkley*, pp. 579-583. See Index for other references.

<sup>5</sup> *Below*, pp. 1029-1037.

<sup>6</sup> *Below*, pp. 1104-1105.

<sup>7</sup> *Below*, pp. 860-862.

the rights of a second husband who had spent much money upon the property and upon the support of his step-children; *Clarke v. Lamb*,<sup>1</sup> concerning the powers of an administrator to lease real estate during the minority of the heirs; *Middlecott v. Scottow*,<sup>2</sup> raising the question whether one person may be appointed administrator when a will names another as executor; and the division of property under the *Glover will*.<sup>3</sup> Several important cases of estates raising problems of Conflict of Laws are discussed under that topic at the end of this introduction.

These pages mention such matters as a caveat,<sup>4</sup> an administrator *de bonis non*,<sup>5</sup> executor *de son tort*,<sup>6</sup> the appointment of a creditor as administrator,<sup>7</sup> and advancements.<sup>8</sup>

The insolvency of a living person does not appear to have been handled in bankruptcy or any other proceeding for the benefit of all his creditors, but the insolvent estate of a decedent was ratably distributed in several cases.<sup>9</sup> Much care was taken to protect all creditors, even non-residents, as is pointed out in the later discussion of Conflict of Laws. *Brattle v. Knight*<sup>10</sup> is an interesting action on a joint bond where one co-obligor had died insolvent.

#### SALES OF PERSONAL PROPERTY

Sellers were sued by buyers because of defective qualities of the articles purchased, such as bad gold,<sup>11</sup> and servant girls whose criminality or pregnancy was concealed.<sup>12</sup> In one case the buyer refused to pay for malt which made them sick that drunk the beer,<sup>13</sup> but another was forced to pay for anchovies warranted merchantable in spite of an old-fashioned Yankee trick by the seller.<sup>14</sup>

<sup>1</sup> Below, pp. 1131-1136.

<sup>2</sup> Below, pp. 821-822.

<sup>3</sup> *Glover Estate*, pp. 426-433; *Rawson v. Glover*, pp. 472-473, 508-511; *Rawson v. Billing*, pp. 543-546.

<sup>4</sup> Below, pp. 81, 109.

<sup>5</sup> Below, p. 95.

<sup>6</sup> *Hudson v. Smith*, pp. 592-594, 833.

<sup>7</sup> *Whipple Estate*, p. 939.

<sup>8</sup> *Chamberlayne Estate*, p. 992.

<sup>9</sup> Examples are: *Bernard Est.*, p. 267; *Curtice Est.*, p. 960; *Smith Est.*, pp. 991-992; *Tay Est.*, p. 994; *Elkins Est.*, p. 1010.

<sup>10</sup> Below, pp. 797-799.

<sup>11</sup> *Rogers v. Rowste*, p. 689.

<sup>12</sup> *Kent v. Smith*, p. 128; *Frankes v. Smith*, p. 690.

<sup>13</sup> *Deane v. Perry*, pp. 724-725.

<sup>14</sup> *Keen v. Oxe*, pp. 906-908.

## CONTRACTS

This topic needs only brief discussion, because several of its aspects have been treated elsewhere in this Introduction. Various types of agreements here reprinted are mentioned under Sources of Law and Maritime Affairs. Land contracts are discussed under Real Estate, and book-accounts under Evidence. Actions on bonds and debts and suits equivalent to general assumpsit are considered under Forms of Action, and suits resembling specific performance under Equity. Foreign transactions appear under Conflict of Laws.

Contracts were commonly in the form of bonds,<sup>1</sup> for example, an agreement to build a house.<sup>2</sup> Like building contracts today, this provides for payment by instalments as successive portions of the work are completed.

Arbitration agreements were frequent, but the awards were often not faithfully observed.<sup>3</sup>

There are several instances of partnership agreements, and *Henchman v. Rock* involved a bitter suit for accounting between partners.<sup>4</sup>

## MARITIME AFFAIRS

The extensive maritime commerce of the Bay Colony and its active fisheries naturally produced much litigation. The *Recovery*, the *Good Hope*, the *Willing Mind*, the *Endeavor*, the *Diligence*, the *pinke Lenham*, and many another vessel sail picturesquely across these pages. Our former associate John Noble has reviewed in our Publications the history of admiralty jurisdiction in the colony.<sup>5</sup> In 1668, the General Court had enacted an elaborate code on "Maritime Affaires,"<sup>6</sup> which is frequently cited in the cases in this book.

The Court of Admiralty had jurisdiction over most of the English maritime controversies, but no truly distinct court for this purpose

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<sup>1</sup> A bond to pay a debt is reprinted on p. 171. Other examples are cited in this introduction, Sources of Law. Compare a bond executed in London, partly in Latin, on pp. 1003-1004.

<sup>2</sup> *Townsend v. Williams*, pp. 1125-1126.

<sup>3</sup> Examples are: *Kellond v. Hudson*, pp. 106-107; *Richards v. Brackett*, p. 107; *Ashton v. Bonner*, p. 167. On colonial resort to arbitration, see *Morris, Studies in the History of American Law*, p. 60.

<sup>4</sup> *Below*, pp. 195-200.

<sup>5</sup> *Our Publications*, VIII. 150-185.

<sup>6</sup> *Whitmore, Colonial Laws, 1672-1686*, pp. 93-100.



existed in Massachusetts until after our period. The Provincial Charter reserved admiralty jurisdiction to the King, and during the eighteenth century the Crown set up admiralty courts for Massachusetts and other colonies.<sup>1</sup> At first admiralty powers were exercised by the various courts of the Bay Colony, the Suffolk County Court included as occasion required. This situation is illustrated by the disposal of the prize *Providence* in 1673.<sup>2</sup> In January, 1673/4, early in our period, the General Court ordered "all Cases of Admiralty" to be heard by the Court of Assistants without a jury unless otherwise thought best; but expressly permitted other courts to entertain suits by mariners and merchants "upon any matter or Cause that depends upon Contract, Covenant, or other matter of common Equity in Maritime Affaires" in accordance with "the known Lawes of this Colony."<sup>3</sup>

This wide exception must have kept the statute of 1673/4 from seriously abridging the jurisdiction of the county courts, and many subsequent maritime disputes occur in these pages. However, a few cases refer to this statute or to the jurisdiction of the English Court of Admiralty. Two of these were brought a few days after the statute was enacted.<sup>4</sup> The ship *Expectation*, captured by the Dutch but recaptured by the English off Nantucket before any condemnation, was claimed by Dudson, "pretended master," and also by Melyen, the former owner. The General Court left Dudson to his "libertye to fitt the said ship for England," where all persons concerned could have a full hearing in some of his Majesty's courts.<sup>5</sup> Apparently Melyen and his friends took possession of the *Expectation* when there was nobody aboard, and in consequence were thrown into prison. Thence they petitioned the General Court for an early trial in the Colony at common law or otherwise, so that they could prove their right to the ship at once instead of undergoing the delays and hardships of being sent to England for trial. On the same day, perhaps

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<sup>1</sup> Our Publications, viii. 156; Charles M. Hough, *Records of Cases in the Vice-Admiralty and Admiralty Courts of New York* (1925); F. B. Wiener, "Notes on the Rhode Island Admiralty, 1727-1790," *Harvard Law Review*, xlv. 44; Marguerite Appleton, "Rhode Island's First Court of Admiralty," *New England Quarterly*, v. 148.

<sup>2</sup> Below, pp. 250-252.

<sup>3</sup> Whitmore, *Colonial Laws, 1672-1686*, p. 213.

<sup>4</sup> *Melyn v. Dudson*, p. 364; *Darvall v. Dudson*, pp. 364-369.

<sup>5</sup> Below, p. 369.



because of this controversy, the statute was passed, and shortly afterwards Melyen and his associate Darvall sued Dudson in the Suffolk County Court. Both suits were dismissed because they were most proper for the cognizance of the new Admiralty Court. Dudson and the notorious Richard Wharton<sup>1</sup> brought an unsuccessful counter-suit against Darvall for unjust molestation and high defamation, because he had a constable seize some goods in their warehouse.<sup>2</sup> The final outcome is unknown.

At the same session of January, 1673/4, the County Court made arrangements for supplying the seamen of the Saint Katharin with provisions until the Court of Admiralty acted.<sup>3</sup>

Several seamen of the ship Griffin sued Captain Lemoigne for not sharing prize money fairly, and also state that he had prosecuted them "at a Court of Admiralty or Court of Assistants." They recovered the unusually large verdict of £5000.<sup>4</sup> Later the plaintiffs were arrested for assaulting Captain Lemoigne and taking his sword, belt, and hat, which they had to deliver into court forthwith.<sup>5</sup>

Suits were brought in the County Court for failure to deliver merchandise in good condition,<sup>6</sup> for seamen's wages,<sup>7</sup> against a kidnapped seaman for passage-money,<sup>8</sup> and for abuse of passengers.<sup>9</sup> The master of a vessel was sued for fraudulently taking to himself the wages of a runaway seaman.<sup>10</sup> The remains of a burned ship were sold to pay wages.<sup>11</sup>

Collisions and other marine accidents have been discussed under Negligence. In one of these cases a litigant seems familiar with the admiralty rule for distributing damages,<sup>12</sup> and in another execution is levied upon a vessel.<sup>13</sup>

<sup>1</sup> See in this introduction, Attorneys and Magistrates, and Litigiousness.

<sup>2</sup> *Dudson v. Darvall*, pp. 385-387.

<sup>3</sup> Below, p. 413. Notice the Puritan uncertainty about the "Saint" in the records.

<sup>4</sup> *White v. Lemoigne*, p. 988. Another prize-money suit by a "Griffin" seaman is *Jackson v. White*, p. 982.

<sup>5</sup> *White*, pp. 994-995.

<sup>6</sup> *Sheafe v. Palmer*, pp. 829-830; *Smith v. Rand*, pp. 621-624.

<sup>7</sup> *Flood v. Legg*, pp. 858-860; *Legg v. Flood*, pp. 1054-1055.

<sup>8</sup> *Sprague v. Collins*, pp. 18-20; *Lidgett v. Collins*, pp. 43-44.

<sup>9</sup> *Hollett v. Pelton*, p. 1077.

<sup>10</sup> *Warren v. More*, p. 824.

<sup>11</sup> *The William and Thomas*, pp. 1068-1069.

<sup>12</sup> *Woode v. Chantrell*, at p. 162.

<sup>13</sup> *Stuart and Ludden*, pp. 407-408.

Innumerable questions were raised by the voyage of the ketch *Recovery*.<sup>1</sup> Other interesting voyages are those of the *Good Hope* from North Carolina,<sup>2</sup> of an unnamed shallop to the Maine coast and the Bay of Fundy,<sup>3</sup> of the *Endeavour* to the West Indies with an iron-gray horse,<sup>4</sup> of the *Blessing* to Martinique and France,<sup>5</sup> and of the *Thomas* and *Mary* from the West Indies.<sup>6</sup>

Certain maritime topics do not occur. There is no instance of general average, which is the oldest principle of sea law, or of maritime liens or of insurance and bottomry; and salvage appears only once and incidentally.<sup>7</sup> But we find mention of fractional shares of vessels,<sup>8</sup> protests,<sup>9</sup> surveys,<sup>10</sup> demurrage,<sup>11</sup> and portage (or portledge).<sup>12</sup>

Important maritime documents reprinted in these pages include charter-parties,<sup>13</sup> bills of lading,<sup>14</sup> and a bill of sale of a ship executed by the builder.<sup>15</sup>

### NEGOTIABLE INSTRUMENTS

Bills of exchange appear frequently in this book, and their assignability had been sanctioned by a statute<sup>16</sup> which also made specialty debts assignable.<sup>17</sup> Promissory notes, which were not yet definitely established in England, appear occasionally. Mention is sometimes made of an instrument now unfamiliar, an obligatory bill,<sup>18</sup> defined in *Bouvier's Law Dictionary* as a promissory note with a seal.

The colonists appear to have had a good understanding of the

<sup>1</sup> See *Litigiousness*, in this introduction.

<sup>2</sup> *Miller v. Risco*, pp. 277-285.

<sup>3</sup> *Waldren v. Smith*, pp. 135-139.

<sup>4</sup> *Davis v. Legg*, pp. 504-507.

<sup>5</sup> *Wharton v. Elson*, pp. 661-669.

<sup>6</sup> *Alford v. Endicott*, at p. 727.

<sup>7</sup> *The Providence*, pp. 250-252.

<sup>8</sup> *Below*, pp. 31-36.

<sup>9</sup> *Below*, pp. 901-903, 1119.

<sup>10</sup> *Below*, pp. 279-280, 1119.

<sup>11</sup> *Below*, pp. 471, 661-669.

<sup>12</sup> *Below*, pp. 134, 858-860.

<sup>13</sup> *Below*, pp. 277-278, 1117-1118.

<sup>14</sup> *Below*, pp. 141-142, 157, 505, 622, 663-664.

<sup>15</sup> *Waldron v. Henderson*, at p. 901.

<sup>16</sup> Title Bills, enacted in 1647.

<sup>17</sup> See *Williams v. Woodbridge*, pp. 767-770. However, judgments were not assignable, by title *Judgments* in the revisions of 1660 and 1672.

<sup>18</sup> Examples are *Mead v. Turner*, pp. 36-43; *Sharp v. Rider*, pp. 359-363. It is not stated that these instruments were under seal.

principles of the law merchant with regard to negotiable instruments. One case repeatedly cites the valuable contemporary treatises by Malynes and Marius in dealing with a peculiar instrument which created complex relations among the payee, the drawer, and the drawer's principal.<sup>1</sup> Other cases contain examples of acceptance;<sup>2</sup> protest and notice of dishonor,<sup>3</sup> including a protest in France;<sup>4</sup> suits by an assignee,<sup>5</sup> one of which raised the question whether payment to the assignor was a defense against the assignee;<sup>6</sup> equitable defenses of fraud and want of consideration;<sup>7</sup> and a suit for failure to give security for the payment of a bill.<sup>8</sup> In a very interesting case<sup>9</sup> the assignee of a bill issued in an illegal transaction was denied recovery against the drawer (or possibly the acceptor) because the Court of Assistants had issued an order against payment; but the assignor was directed to repay the price of the bill to the assignee who bought in good faith. In *Paige v. West*<sup>10</sup> it was held that the attachment by the payee's creditor of funds in the drawer's hands gave the drawer no defense against the payee.

Instruments payable in merchandise are not valid bills or notes today, but they were usual in the colony.<sup>11</sup>

A letter of credit is mentioned in one case in which the issuer had failed to pass bills in accordance therewith.<sup>12</sup> Jesson, the obstinate jurymen, sued Bushell for failure to draw bills in Jesson's favor, but lost.<sup>13</sup>

#### MEDIUM OF EXCHANGE

As might be expected from the statute, title Payments,<sup>14</sup> judgments as well as contracts were frequently payable in merchandise. Thus

<sup>1</sup> *Mead v. Turner*, pp. 36-43.

<sup>2</sup> *Sharp v. Rider*, pp. 359-363; *Hunt v. Warren*, p. 1170.

<sup>3</sup> *Rawson v. Cooke*, p. 475; *Paige v. West*, pp. 1080-1083.

<sup>4</sup> *Wharton v. Elson*, pp. 661-669.

<sup>5</sup> *Briggs v. Giffard*, pp. 691-692.

<sup>6</sup> *Briggs v. Leverett*, pp. 617-619.

<sup>7</sup> *Yeale v. Shoare*, p. 326.

<sup>8</sup> *Lidgett v. Foote*, p. 774.

<sup>9</sup> *Deane v. Hubbard*, pp. 788-791.

<sup>10</sup> *Below*, pp. 1080-1083.

<sup>11</sup> An example is reprinted on p. 14. See Index under Bills and Notes.

<sup>12</sup> *Whitcomb v. Burnham*, p. 21.

<sup>13</sup> *Jesson v. Bushell*, p. 672; see in this introduction, *Juries*.

<sup>14</sup> *Whitmore*, Colonial Laws, 1672-1686, pp. 120-121; see in this introduction, *Equity*.

rent in a lease and several judgments were payable in fish.<sup>1</sup> One judgment was payable in provisions and another in boards.<sup>2</sup> Bills and notes payable in merchandise are discussed elsewhere.<sup>3</sup> West Indian accounts were often figured in pounds of sugar, and Virginian accounts in tobacco.<sup>4</sup>

Although the General Court had set up a mint to coin silver money of the colony, and had provided that no other coin except English should be current money,<sup>5</sup> many other kinds of money occur in the cases: pieces of eight,<sup>6</sup> guilders and stivers — wampum value,<sup>7</sup> or simply wampum,<sup>8</sup> French livres,<sup>9</sup> markes and nobles,<sup>10</sup> sterling money of Barbados.<sup>11</sup>

### REGULATION OF INDUSTRY

The Bay Colony was no home of *laissez faire* doctrines. Its statutes show almost as much governmental attention to industry as in modern legislation,<sup>12</sup> and several cases let us see these statutes in operation. The industries and occupations affected include the practice of medicine,<sup>13</sup> tanning,<sup>14</sup> making pipe-staves,<sup>15</sup> raising cattle,<sup>16</sup> and baking,<sup>17</sup> and the exportation of gunpowder<sup>18</sup> and money<sup>19</sup> out of the colony. The statute against selling at an excessive price, brought about by King Philip's War, was enforced in one case.<sup>20</sup> Several ship carpenters gave an interloper who had never served his time a long ride on a pole. Their defense in court that they "understood such things were usual in England" got them let off with small fines.<sup>21</sup>

<sup>1</sup> Below, pp. 30, 295, 317-318.

<sup>2</sup> Below, pp. 79, 1072.

<sup>3</sup> See in this introduction, Negotiable Instruments.

<sup>4</sup> Examples are found on pp. 47-48, 1137-1138.

<sup>5</sup> Title Money, Whitmore, Colonial Laws, 1672-1686, pp. 117-119. See the discussion of money and payment in Maine Province and Court Records, II. xi.

<sup>6</sup> Below, pp. 60-62, 156-158.

<sup>7</sup> Below, pp. 359-363, 1052.

<sup>8</sup> Below, pp. 1123-1124.

<sup>9</sup> Below, pp. 661-669.

<sup>10</sup> Below, p. 910.

<sup>11</sup> Below, p. 927.

<sup>12</sup> See E. G. Baird, "Business Regulation in Colonial Massachusetts (1620-1780)," *Dakota Law Review*, III. 227.

<sup>13</sup> *Russell v. Barefoot*, pp. 299-300; *Snelling's License*, 559-560.

<sup>14</sup> *Lidgett*, p. 117; *Marsh*, p. 339; *Gilbert v. Matson*, 796-797; other cases involving this industry are on pp. 313, 413.

<sup>15</sup> *Jenners Fined*, *Parkman Fined*, p. 311.

<sup>16</sup> *Waldron v. Marshall*, at p. 763.

<sup>17</sup> Below, p. 412.

<sup>17</sup> Below, p. 126.

<sup>19</sup> *Stanberry*, p. 559.

<sup>20</sup> *Batt*, p. 632.

<sup>21</sup> *Roberts*, p. 602.



One other industry was extremely active in the Bay Colony. The Puritans had no aversion to strong drink. In one instance we find the County Court granting the petition of the inhabitants of an island for the establishment of a place to supply them with liquor. The number of licenses issued in Boston seems considerable for a town of 4,500. At the same time, the conditions under which liquor was sold were carefully regulated. Perhaps no single topic occupies more space in these pages. In addition, licenses were required for the sale of coffee and chocolate and for cook-shops to dress victuals.

### CRIMES IN GENERAL

Capital offenses hardly appear here because they were tried in the Court of Assistants.<sup>1</sup> In two instances men were bound over by the Suffolk County Court to appear before the Court of Assistants on capital charges of atheism and blasphemy.<sup>2</sup> One prosecution for blasphemy took place in the County Court.<sup>3</sup>

Serious offenses which were not capital are abundant in these pages. Besides slander, libel, and negligence, discussed under separate headings, we find many instances of stealing, including the theft of surgical instruments,<sup>4</sup> and of burglary or breaking and entering. There are isolated occurrences of obtaining money by fraud,<sup>5</sup> fraudulent use of a deed,<sup>6</sup> embezzlement,<sup>7</sup> burning an award,<sup>8</sup> pound breach,<sup>9</sup> smuggling,<sup>10</sup> and attempted suicide.<sup>11</sup> Election frauds had already begun, for one man was accused of stuffing the ballot-box,<sup>12</sup> and another of being a "ringer" at a town meeting.<sup>13</sup> Some of these offenses fell within an express statutory prohibition, but in a few instances it seems likely that the court was trying a common-law crime without legislative authorization.

The same can be said of some of the minor offenses noted, although others constituted statutory crimes. Interesting examples of trivial

<sup>1</sup> Whitmore, *Colonial Laws, 1672-1686*, p. 36.

<sup>2</sup> Marshall, p. 86; Barefoote, pp. 86-87.

<sup>3</sup> Reade, pp. 114-115.

<sup>4</sup> Hannah, pp. 1153-1157.

<sup>5</sup> Holleday, p. 782.

<sup>6</sup> Synderland, p. 600; Cannon, p. 604.

<sup>7</sup> Phips, p. 887.

<sup>8</sup> Knight v. Moulder, p. 274.

<sup>9</sup> Baker, p. 939.

<sup>5</sup> Francis, pp. 555-556.

<sup>9</sup> Noakes, pp. 308-310.

<sup>11</sup> Cittern, p. 189.

<sup>13</sup> Langle, p. 959.



offenses are: abusive language and disorder,<sup>1</sup> gaming,<sup>2</sup> night-walking,<sup>3</sup> card-playing,<sup>4</sup> singing and fiddling at midnight,<sup>5</sup> high asseverations and profane wishes against oneself,<sup>6</sup> nailing up one's own shop windows (just the opposite of breaking and entering),<sup>7</sup> and suspicious speeches about a fire likely to happen in Boston.<sup>8</sup> Taking tobacco within twenty poles of a house was forbidden by statute<sup>9</sup> — obviously to prevent fires. Clarke and Phillips were fined for "taking tobacco" in the streets of Boston,<sup>10</sup> and Phillips paid an additional fine because he reviled a grand-juryman who reproved him for smoking.

The statute "Provoking Evils," enacted during the disasters of King Philip's War for the express purpose of averting further divine wrath, attempted to end various fallings from grace, including "the evil of pride in Apparel, both for Costliness in the poorer sort, and vain, new strange Fashions both in poor and rich, with naked Breasts and Arms, or as it were pinnioned with the Addition of Superfluous Ribbons, both on Hair and Apparel."<sup>11</sup> Two girls in these records were prosecuted for exceeding their rank in their apparel.<sup>12</sup>

Although scolds, by a statute of May, 1672, were to be "Gagged, or set in a Ducking stool, and dipt over Head and Ears three times in some convenient place of fresh or salt water,"<sup>13</sup> no instance of this penalty appears. In two cases of scolding, before the statute was enacted, Mrs. Murphy was merely whipped with ten stripes and Elizabeth Arnold got off with a fine.<sup>14</sup> In 1673, the Camble girl was charged with pernicious lying and making disturbance among the neighbors, but as her father testified that she had been "corrected privately," the court dismissed her with an admonition.<sup>15</sup>

Public nuisances often seem not to be covered by any specific statute, but they were involved in several cases. Freegrace Bendall,

<sup>1</sup> Gross, pp. 112-113; Robinson, p. 302.

<sup>2</sup> Norman v. Salter, p. 131.

<sup>3</sup> Richardson, p. 23; Read, p. 24; Wainwright, p. 265; Butcher, pp. 896-897.

<sup>4</sup> Gold, p. 184.

<sup>5</sup> Chandler, p. 232.

<sup>6</sup> Gibbs, p. 304.

<sup>7</sup> Meadore, p. 753.

<sup>8</sup> Dove, Admonished, p. 785.

<sup>9</sup> Title Tobacco, Whitmore, Colonial Laws, 1672-1686. p. 146.

<sup>10</sup> Below, pp. 937, 995.

<sup>11</sup> Whitmore, Colonial Laws, 1672-1686, p. 233.

<sup>12</sup> Hemenway Presented, p. 698; Roberts Admonished, p. 751.

<sup>13</sup> Whitmore, p. 206.

<sup>14</sup> Below, pp. 90, 92.

<sup>15</sup> Below, p. 255.

the Clerk of the Court, was fined five pounds for suffering his wreck to lie in the channel, and ordered to remove the obstruction within a fortnight; and Robinson was prosecuted for casting ballast in the channel at inconvenient places in violation of a statute.<sup>1</sup> The Braintree selectmen were ordered to remove a widow from a house "that endangereth her life," and the Boston selectmen to look after a dangerous wharf when an attempt to prosecute the owner had failed.<sup>2</sup> Rose was presented for letting his well lie open, and ordered to make it safe within a week under penalty of five pounds; and Atkinson was similarly treated for "letting his Cellar doores lye open & his Cellar often halfe full of water dangerous for passengers."<sup>3</sup>

Punishments imposed during this period by the Court of Assistants and the General Court have been reviewed in our Publications by Mr. John Noble.<sup>4</sup> These volumes add abundant material about punishments in the County Court. Some of the Bay Colony penalties seem brutal to us, but they were no harsher than those in seventeenth-century England, and several offenses were treated more leniently by the colonists. The most significant fact is that the colonists seem to have made very little use of the favorite modern method of punishment by long terms of imprisonment. They got rid of the worst offenders by executions (not a matter for the County Court); the others they usually subjected to some short and sharp penalty and then turned them loose or else sold them into service. To imprison thieves and other rascals for years, as we do, would have cost the taxpayers dear, left the prisoners' relatives without support, and kept men idle when the community wanted man-power. Consequently, most offenders were let out after they had paid their fines and damages to the victim, or had been whipped or otherwise disgraced. The frequent use of bonds for good behavior served somewhat the same purpose as probation today. A few offenders were sent to the House of Correction,<sup>5</sup> and one aged man spent two years in jail for drunken-

<sup>1</sup> Below, pp. 116, 1101; Title Ballast, Whitmore, Colonial Laws, 1672-1686, p. 9.

<sup>2</sup> Pray, p. 188; Hutchinson's Presentment, p. 227.

<sup>3</sup> Below, pp. 629, 675.

<sup>4</sup> Our Publications, III. 51 ff.

<sup>5</sup> Hoppin, p. 89; Wainwright, p. 265; Chamberlin, p. 266; Wharton, p. 674; Marnel, p. 894. Read (p. 84) was imprisoned at hard labor at the court's pleasure, but the place of confinement is not mentioned.

ness, until his forgiving wife obtained his release.<sup>1</sup> And it must be remembered that confinement until a fine was paid might last for some time. The thrifty colonists occasionally guarded against that expensive possibility by authorizing the jail-keeper to sell the prisoner to service in any part of His Majesty's dominions<sup>2</sup> — a punishment which might be worse than death.

Pecuniary punishments might run as low as ten groats for fighting or excessive drinking,<sup>3</sup> but the fines were usually much more, and court fees were added. Thieves and other perpetrators of crimes against property were also required to pay treble damages to their victim. Where restitution was possible, it was ordered and usually went as part of the treble damages.<sup>4</sup> In one case a public sale of the offender's property was held to enable treble damages to be paid.<sup>5</sup>

This overlapping of criminal penalties and compensation for torts also appears in orders to an assailant to pay the medical expenses of his victim,<sup>6</sup> and in the cases of criminal negligence elsewhere discussed. In several cases the court expressly authorized the victim of a crime to bring a civil action against the defendant.<sup>7</sup> Considerable care was evidently taken to prevent the victims of theft from receiving back their property without the permission of the court, and several persons were prosecuted for such misprision of felony,<sup>8</sup> which today is almost totally ignored by the authorities.

Disgraceful punishments, now happily obsolete, were common. Several burglars and breakers-in were branded with "B,"<sup>9</sup> with the loss of an ear thrown in for one man who chose Sunday for his mis-

<sup>1</sup> Smith, pp. 1101-1102.

<sup>2</sup> The provisions for sale are too numerous to cite (see Index) and seem to become more frequent toward the end of our period.

<sup>3</sup> Atherton, p. 956; Marshcroft, p. 995.

<sup>4</sup> Examples are: Chandler Sentenced, p. 112; Decro, p. 938; White, pp. 994-995; Willistone, pp. 1160-1161.

<sup>5</sup> Colcord to Thornton, p. 945.

<sup>6</sup> Atherton, p. 151; Pitman, p. 890.

<sup>7</sup> Mason Admonished, p. 150; Waldron v. Marshall, at p. 763; Waldron v. Bassett, at pp. 764-765; Marshall v. Waldron, at pp. 783-784; Whaley and Ranger, p. 1164; see also this introduction, Negligence.

<sup>8</sup> Lincoln Fined, pp. 329-330; Gulliver Sentenced, p. 482; Tappin Fined, pp. 780-781. See Dudson v. Darvall, at p. 387; and the controversy about Waters's horse and the obstinate Jesson, this introduction, Juries.

<sup>9</sup> Tailor Sentenced, p. 88; Keyn's Sentence, p. 235; Pollard, p. 1163.

deeds,<sup>1</sup> but the "A" made famous by Hawthorne does not occur in these pages, although some of the cases show the fact of adultery. The pillory<sup>2</sup> and the stocks<sup>3</sup> exhibited offenders for the instruction or amusement of their fellow-citizens, who could also watch Read and Richardson sitting at the gallows with a rope around their necks,<sup>4</sup> or Veering, Jay, and Sarah Scott standing on a stool two feet high in the market place with papers on their breasts describing their misdeeds in detail.<sup>5</sup> It must have been as good as a circus parade to the hard-working people to see women stripped to the waist and whipped at a cart's tail through the streets.<sup>6</sup> And sentences of ordinary whippings were too frequent to enumerate, the number of stripes being defined with precision and occasionally directed to be "severely laide on."

More subtle penalties were sometimes used. Atherton, who had wounded an Indian with his sword, was forbidden to carry this dangerous weapon while in the colony.<sup>7</sup> Jay was disfranchised for vilifying General Winslow.<sup>8</sup> When Robinson was presented for railing and using wicked expressions, the court disenabled him from crying anything "as a publique Cryer."<sup>9</sup>

Offenders (as well as paupers) might be ordered to depart from town or from the colony.<sup>10</sup> Thus Hull, accused of theft, changing his name, and other crimes, was sent back to Barbados which he had left without a ticket.<sup>11</sup> Sometimes these orders were given in what would now be considered a high-handed fashion. When Owen was imprisoned on suspicion of attempting to fire a house in Boston, the evidence proved insufficient to convict him, but all the same he was considered a very vicious, ill-disposed person and told to leave Boston immediately and not return within ten miles of the town.<sup>12</sup>

The mildest form of punishment was admonition. This sensible

<sup>1</sup> Carr Sentenced, pp. 556-557.

<sup>2</sup> Lawton, pp. 302-304, Curle, pp. 628-629; Barker, p. 886.

<sup>3</sup> Hickson, pp. 442-443; Bedwell, p. 443; Colcord, p. 943.

<sup>4</sup> Below, pp. 84-85.

<sup>5</sup> Below, pp. 231, 697, 302.

<sup>6</sup> Brewster, etc., p. 843. See also Hawkins, p. 558; Wharton, p. 674; Gibbs, p. 677.

<sup>7</sup> Below, p. 151.

<sup>8</sup> Below, p. 674.

<sup>9</sup> Below, p. 302.

<sup>10</sup> For instance, Morton, pp. 521-522; Jinkins and Whitmarsh, p. 1068; Davis, pp. 1098-1099.

<sup>11</sup> Below, p. 1157.

<sup>12</sup> Below, p. 1100.



method of dealing with first offenses was used by the Suffolk County Court as often as by a modern traffic policeman.

Indians could be tried for crime in the ordinary courts and their conduct was the subject of much legislation,<sup>1</sup> especially that concerned with keeping them away from liquor. The noble savage ran chiefly to petty crimes, like breaking into a Braintree house and there drinking and spilling nearly a barrel of cider.<sup>2</sup> For this the Indian was sentenced to be whipped with thirty stripes (much over the usual white man's allotment), to pay treble damages and court fees, and to stay in prison until the sentence was performed. A few days later the keeper of the prison complained that the cider-owner had not looked after the Indian, i. e., was not paying his board in jail. The court then ordered that if nothing was done soon, it was in the power of the keeper to sell the Indian into service. Another Indian, who came into Bennett's house against his consent, demanded drink, and then threw stones at Bennett and pulled him by the hair, was sentenced to have his "haire cut round close off from his head," with thirty stripes and court fees besides, and more whipping if afterwards found in Boston.<sup>3</sup> Such were the blessings of civilization to the former lords of the soil, who in forty years' time had lost their land, their dignity, and even their names, so that they were tried for the most part under the nicknames given them by their white dispossessors — James, Frank, Jasper, Zachariah.

Criminal procedure plays a much smaller part in these pages than civil procedure, and only a few points need mention. The present Massachusetts law facilitating arrests on suspicion,<sup>4</sup> which are illegal in many states, may be related to the practice shown in the case of Richardson, who was bound over on suspicion of breaking open Pyncheon's warehouse.<sup>5</sup> One accused man who jumped his bail before trial had his property sequestered to compel his return.<sup>6</sup> The right to jury trial has been discussed under *Juries*, and the trial of non-residents under *Conflict of Laws*.

Law-enforcement agencies were primitive. The old custom of hue

<sup>1</sup> See topic *Indians* in index to Whitmore's *Colonial Laws*, 1672-1686.

<sup>2</sup> *James Indian*, pp. 112, 119.

<sup>3</sup> *Coweset Indian*, pp. 147-148. *John Indian*, p. 148, also had a hair-cut.

<sup>4</sup> Wickersham Commission's *Report on Lawlessness in Law Enforcement* (1931), pp. 108-109.

<sup>5</sup> *Below*, p. 23.

<sup>6</sup> *Sprague*, p. 442; see *Robbinson*, p. 1101.



and cry appears in several cases.<sup>1</sup> Probably private citizens were more active than now in the apprehension of offenders, because everyone knew his neighbor; and crime was more a matter of general concern. There were no town or state police, of course, and the chief burden of supplementing private citizens fell upon the constables. One finds indications that some of these constables were of the type of Dogberry and Verges. One constable let his prisoner escape from him on the Charlestown ferry, and the other passengers appear to have aided the prisoner rather than the constable.<sup>2</sup> The Medfield constable complained that two small boys had run off with his official staff.<sup>3</sup> This black staff, five feet long, tipped at the upper end for about five inches with brass,<sup>4</sup> was a very important article, and a constable was almost helpless without it. For instance, there was much to-do about the staff in the arrest of Ashton by the youthful deputy constable in Rehoboth over in Plymouth Colony.<sup>5</sup> Even prisons were none too secure, for escapes are mentioned several times.<sup>6</sup>

Among miscellaneous interferences with criminal justice, Hurd advised a fellow-prisoner not to confess the burning of a barn,<sup>7</sup> White went back on his vital testimony before the grand jury about another man's being drunk,<sup>8</sup> and Williams dissuaded a delinquent from giving himself up to justice in obedience to a warrant.<sup>9</sup>

### SEXUAL RELATIONS

Marriage in the Bay Colony before 1680 was solemnized only by magistrates. Whatever the power of the ministers, they failed to make use of this method of influencing human lives which priests have found so effective in other periods. The statutes also provided for publicity by banns and entry of the marriage in the town records within a month.<sup>10</sup>

<sup>1</sup> Whitmore, *Colonial Laws, 1672-1686*, p. 31; Harris, p. 24; Mason *Admonished*, p. 150; Ashton V. Gibbs, pp. 347-358; Stevens, p. 913; Toleman, p. 956.

<sup>2</sup> Tudor, p. 26; Wiswall, p. 27.

<sup>3</sup> Fairebanks, p. 257.

<sup>4</sup> Whitmore, *Colonial Laws, 1672-1686*, pp. 31, 221.

<sup>5</sup> Below, p. 350.

<sup>6</sup> For instance, Read, p. 88.

<sup>7</sup> Below, p. 89.

<sup>8</sup> Below, p. 90.

<sup>9</sup> Below, p. 300.

<sup>10</sup> Whitmore, *Colonial Laws, 1672-1686*, pp. 101-102, 130. See C. L. Powell, "Marriage in Early New England," *New England Quarterly*, I, 323.

Early marriages were the common practice in the Bay Colony. The statutes made it a crime for a man to endeavor to "draw away the Affection of any Maid . . . under pretence of Marriage" before obtaining the permission of her parents or governors (or in their absence of the nearest magistrate), but if a child were unreasonably denied "timely or convenient marriage," she could complain to the authorities and seek redress.<sup>1</sup> Since runaway couples could not resort to a friendly clergyman, an elopement had even more serious consequences than today. We find William Hawkins conveying Hannah Hoppin away by night without her friends' consent and sending her to Barbados, where she is reported to be with child;<sup>2</sup> Benjamin Scott drawing away the affections of Prudence Gatcliffe without her parents' leave;<sup>3</sup> Timberlake carrying off a pregnant widow with the help of Starkey.<sup>4</sup> Isaac Gross abducted Mary Mirack, a servant girl who was also with child, and called her his wife upon the journey. Gross was heavily fined, and Elizabeth Edsall, who assisted in hiding the girl, was put under bonds.<sup>5</sup>

Husbands who had left their wives in England were an especial source of trouble in the colony, and were frequently ordered to depart for home at the earliest opportunity, as a statute required.<sup>6</sup> Mr. Atherton argued in July, 1676, that though he had been long away from his wife, his business was not yet done and so he could not go home; but he was ordered to return to her before the next session of court. Three sessions later, in April, 1677, he was still around, "there having been several oppertunities since which hee hath omitted." The court collected twenty pounds on his bond and told him to go by the next ship or pay twenty more.<sup>7</sup> Mr. Tipping was charged with "making Sute to some maids or women in order to marriage, he having a wife in London." He denied the suit, but admitted the wife, and was ordered to sail.<sup>8</sup> The most entertaining of these errant husbands was Henry Jackman, who purported to be a single man and attempted marriage with several, besides carrying a

<sup>1</sup> Whitmore, *Colonial Laws, 1672-1686*, pp. 101, 28.

<sup>2</sup> Below, pp. 82, 107-108.

<sup>3</sup> Below, p. 221.

<sup>4</sup> Below, p. 258.

<sup>5</sup> Below, p. 265.

<sup>6</sup> Hall, p. 23; Pascoa, p. 108; Bragg, p. 119; Blake and Burrell, pp. 518-519; Cresey, pp. 779-780; Welden, p. 942; Whitmore, *Colonial Laws, 1672-1686*, pp. 101-102.

<sup>7</sup> Below, pp. 720, 811.

<sup>8</sup> Below, p. 943.

flaming firebrand at midnight past a barn and hay stack. He was sentenced to be whipped with twenty stripes, pay witness fees and costs, and return to his wife by the next ship. He came into court drunk to get his whipping, and so he was given five stripes more for good measure.<sup>1</sup>

Cases of domestic quarrels are numerous, and some households went to pieces. Rolfe was charged with having two wives, but was acquitted.<sup>2</sup> John Smith went away from his wife with Patience Rawlins, whom he passed off as married to him.<sup>3</sup> Conversely, a wife was ordered from Boston to join her husband in Taunton;<sup>4</sup> and Mrs. Drury vainly alleged her husband's impotence as an excuse for living apart.<sup>5</sup>

In other situations the court struggled hard to keep a man and a woman apart. Walter Hickson and Mrs. Samuel Bedwell, for keeping company and being too familiar, both sat in the stocks two hours, and were threatened with ten stripes apiece if thereafter found alone together.<sup>6</sup> Such an order had little effect upon Joseph Belcher and Waitstill Spur. Upon their continuing to see each other at the girl's house, the court made him pay £20 and fined the girl's father £10.<sup>7</sup>

Even newly wedded couples did not always escape the rigors of the law. When the birth of a child within thirty-two weeks after the ceremony indicated that they had "sat down to meat before grace" — if Fielding's phrase may be applied to civil marriages — then, besides paying a fine, the couple had to stand up together at church or in town meeting and publicly acknowledge their sin, or else be whipped ten stripes by the constable.<sup>8</sup>

<sup>1</sup> Below, p. 232.

<sup>2</sup> Below, p. 150.

<sup>3</sup> Below, p. 1158.

<sup>4</sup> Pointing, p. 121.

<sup>5</sup> Below, pp. 754-755, 837-841.

<sup>6</sup> Below, pp. 442-443. See Wharton and Gridley, p. 914; Knight and Forrest, pp. 1023-1024, 1161.

<sup>7</sup> Below, pp. 809-810. See under Equity, in this introduction, for modern parallels.

<sup>8</sup> Examples of this frequent offense are: Egerton, p. 22; Wheaton, pp. 23, 80; Middleton, pp. 90-91. Sometimes the public acknowledgment was omitted: Collicott, p. 114; Hall, pp. 23, 119.

On this topic and its relation to common-law marriages, see Powell, in *New England Quarterly*, i. 323, giving similar cases in Plymouth Colony: H. B. Parkes, "Morals and Law Enforcement in Colonial New England," *id.*, v. 431; Parkes, "Sexual Morals and the Great Awakening," *id.*, iii. 133; Maine Province and Court Records, ii. xliii.

Harsh as this treatment now seems, it had a social value in emphasizing the vital importance of public marriage. The settlers had brought over from England the custom of privately contracted unions effected by the parties themselves without any ceremony whatever. Such "hedge marriages" were probably valid by English common law. The custom persisted in most of the colonies, and common-law marriages are valid in about half the United States today, notwithstanding the effect of this laxity upon morals and upon property rights. It is absurd to require deeds and important contracts to be written and recorded, and yet allow valuable dower rights and other marital claims to rest on nothing but oral testimony, often fabricated and always liable to injure purchasers who bought land assuming the previous owner to be a bachelor. Massachusetts was one of the first states absolutely requiring a ceremonial marriage (civil or religious). The Puritans performed a permanent service to the Commonwealth by insisting that engagement and wedlock should not be indistinguishably blended but ought to be separated by a definite and public event sanctioned by the presence of an authoritative person. Nothing but sharp punishments could have wrenched the Massachusetts settlers out of their lax habits of common-law marriages and *de facto* unions consummated in the comfortable belief that a ceremony would follow some day or other. Henceforth no doubts would arise as to what was marriage and what was not, even if there were a good deal of the latter.

That life among the Puritans was far less "drab" than it is pictured by some of our bright young authors, is shown by these and many other cases, like the careers of the Widow Thomas<sup>1</sup> and of Sarah Blacklock,<sup>2</sup> who called forth a colonial version of the writ *de ventre inspiciendo*;<sup>3</sup> the premature divorce of Wharton and Mary Gridley;<sup>4</sup> and the incidents of merry wives "founde sitting in other mens Laps with theire Armes about theire Necks,"<sup>5</sup> or John Gill's wife enjoying herself "in company of severall men at the house of Arthur Keyne,

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<sup>1</sup> Below, pp. 82-84, 126, 266.

<sup>2</sup> Kent v. Smith, p. 128; Smith, pp. 149-150; Smith v. Kent, pp. 164-165; Smith, pp. 185-186; Blacklock, pp. 189, 237.

<sup>3</sup> Below, pp. 185-186, 189. See Carpenter, p. 91.

<sup>4</sup> Below, p. 914. See Wharton, p. 674.

<sup>5</sup> Wheeler and Peirce, p. 443.



drinking and dancing.”<sup>1</sup> Several other light ladies and their lovers enlivened the streets of Boston.<sup>2</sup> One man gallantly attempted to help his mistress escape from prison.<sup>3</sup> A master was found guilty of wanton conduct toward his serving maid, and she was declared free from her indenture.<sup>4</sup> Bastardy, which affected both morality and taxes, was the subject of numerous proceedings, in which paternity was proved by the mother’s declarations in travail<sup>5</sup> or by her oath in court.<sup>6</sup> The Indians and the negroes, as might be expected, did not fail to follow such examples set by the whites.<sup>7</sup>

Care must be taken not to draw exaggerated inferences from the court cases as to the prevalence of licentiousness among the Puritans. In the assessment of the morals of a community, the indecency that is punished is far less significant than what goes unpunished because no one seriously objects. The situation in the Bay Colony doubtless resembled that in Plymouth, where Governor Bradford declared: “Hear . . . is not more evils in this kind, nor nothing nere so many by proportion, as in other places; but they are here more discovered and seen.”<sup>8</sup> Prying neighbors and active magistrates ferreted out these offenses and prosecuted them. Wrongdoers had much less chance than nowadays of escaping public attention. Consequently, these cases may represent a very considerable portion of the total immorality in Suffolk during our period, and are not merely a small sampling from a large mass of indecency, mostly undetected or lightly passed over. On such an assumption, the cases here reported are not so numerous as to form a dark picture. After all, legal records always stress the seamy side of a period. Happy marriages do not often get into court.

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<sup>1</sup> Below, p. 941. For other instances of misconduct by wives, see Moxon, p. 94; Veering and Smith, p. 233; Hickson and Bedwell, pp. 442-443; Blake and Burrell, pp. 518-519; Morton, pp. 521-522; Ockerly and Langberry, pp. 604-605; Wharton, p. 674; Gill, p. 941; Forrest and Knight, pp. 113-114, 237, 1023-1024, 1161.

<sup>2</sup> Plumm, pp. 125, 185; Sprague, p. 424; Dobleday, p. 626; Jay, p. 697; Messenger and Hews, pp. 912-913; Jinkins and Whitmarsh, p. 1068.

<sup>3</sup> Hawkins and Fogg, p. 558.

<sup>4</sup> Man, p. 807.

<sup>5</sup> See under Evidence, in this introduction.

<sup>6</sup> Below, pp. 91, 254, 939, 1012.

<sup>7</sup> Warro, p. 113; Judkin, pp. 183-184; Mason, p. 185; Rock’s Negro, p. 232; Jasper and Joan, p. 233; Miriam, Morea, p. 809; John Negro, p. 1067.

<sup>8</sup> Bradford, *History of Plymouth Plantation*, (ed. 1912) II. 309.



## THE CHURCHES

Although church and state were united in the Bay Colony, these records offer few data to justify the term "theocracy," often applied to the Massachusetts form of government until 1685. A few matters came before the Suffolk County Court which no judge would touch today, such as supplying a preacher for a church<sup>1</sup> or punishing absences from church. The latter charge was frequent,<sup>2</sup> and sometimes called forth amusing excuses. George Fairebank appears to have been "an occasional sitter" like Samuel Pepys, for he stayed away from his regular church in Medfield and said he went often to Dedham and other places.<sup>3</sup> The Medfield preacher was also neglected by Jonathan Adams, who owned in court that he worshipped God but did not frequent the public assembly.<sup>4</sup>

Quakers were frequently in trouble for going to their own meetings instead of to church.<sup>5</sup> Nicholas Moulder, whose participation in civil litigation indicates wealth, appears to have been a leader among the Quakers.<sup>6</sup> Meares, when charged with presence at a Quaker meeting, said he only went in to hear them as he was on his way to the North Church, but once in he stayed.<sup>7</sup> Most of the Quakers got off with admonitions and costs. Even the flare-up of public antagonism during King Philip's War<sup>8</sup> seems to have produced no real severity. A few Quakers went to prison but were released by the Deputy-Governor's order.<sup>9</sup> Calman, a recent and unwelcomed settler in Boston, was told to leave the colony, and Joan Hyde, a vagabond Quakeress, was released from prison and allowed to return to Rhode Island whence she came.<sup>10</sup>

Another example of mild persecution for the expression of religious opinions, probably of an Anabaptist sort, occurred when Stephen Harding and Pardon Tillinghast came up from Providence to Mendon "to Seduce people to theire corrupt opinions." The two Rhode Islanders were merely warned away and charged with costs.<sup>11</sup>

<sup>1</sup> Fiske, p. 28.

<sup>2</sup> Gillam, p. 118; Chamberlin, pp. 253, 594-595; Shippin, p. 917.

<sup>3</sup> Below, pp. 256-257; see p. 597.

<sup>4</sup> Below, p. 257; see p. 182.

<sup>5</sup> Below, pp. 438-439, 441, 487-489, 599, 630, 677, 753, 997.

<sup>6</sup> Below, pp. 438-439, 599. See Index for his other cases.

<sup>7</sup> Below, p. 487.

<sup>8</sup> Title Provoking Evils, Whitmore, Colonial Laws, 1672-1686, p. 234.

<sup>9</sup> Matson, p. 753. <sup>10</sup> Below, pp. 677, 997. <sup>11</sup> Below, p. 519.

We must not be too complacent in condemning our ancestors for their treatment of Quakers and other dissentients from the ideals of the Bay Colony. Our ideals are different, but strangers who do not accept them are still unwelcome. After all, the sentences of Calman, Joan Hyde, Harding, and Tillinghast were a small matter compared with the deportation from Massachusetts to Spain, in 1919, of a law-abiding philosophical anarchist of the school of Tolstoi and Kropotkin, who had been in the United States seventeen years, had a son born in this country, and owned a house here.<sup>1</sup>

Occasional prosecutions for vilifying ministers have been discussed under Slander and Libel. This is no longer a crime unless it amounts to criminal libel, but a recent local proposal would exclude from Massachusetts any motion-pictures which contain reflections upon clergymen.

The other offenses in these pages which can be attributed to ecclesiastical influence are still crimes in Massachusetts, long after the separation of church and state. The blasphemy law of 1646, which Barefoote and Reade were charged with violating,<sup>2</sup> has not yet disappeared from the Massachusetts statutes, though it no longer carries the death penalty; two prosecutions have been instituted under this law since 1926, one of them in Suffolk County.<sup>3</sup> Sabbatarian laws are still in force, though they no longer extend over Saturday evening.<sup>4</sup> The gates were locked on Boston Neck between Boston and Roxbury as soon as it grew dark on Saturday so as to stop all travel from Roxbury and back.<sup>5</sup> Sabbath violators prosecuted in these pages include some sailors who hoisted their sails that day, as though mildew did not work on Sundays.<sup>6</sup> Fast days, now obsolete, were kept similarly free from ordinary activities.<sup>7</sup>

Disturbances of church services, sometimes still punishable as a breach of the peace, often took an amusing form. One case reveals a long-standing controversy between the Braintree minister and some of his parishioners.<sup>8</sup> Three women were fined for "hunching Rebecca

<sup>1</sup> *Lopez v. Howe*, 259 Federal Reporter, 401 (1919).

<sup>2</sup> Below, pp. 86-87; 144-145; Whitmore, Colonial, 1672-1686, p. 14.

<sup>3</sup> Chafee, *The Inquiring Mind*, pp. 110-116. Both prosecutions failed.

<sup>4</sup> Platts, p. 645; Evered, p. 868.

<sup>5</sup> Order, p. 646.

<sup>6</sup> Stretton, p. 867; Newcomb, p. 307. See also pp. 307, 598, and Index.

<sup>7</sup> Below, pp. 120, 867, 942.

<sup>8</sup> Webb, p. 28.

Bully" during public worship in South Church.<sup>1</sup> Margaret Brewster came into the same church during service "in a disguised manner with her face blacked her haire dishelved [*sic*] about her Shoulders, ashes on her head and sackcloth on her Shoulders." Such religious zeal was too much, even then. She and her two female companions, all of them probably Quakers, were stripped of sackcloth and everything else down to the waist, and whipped out of town.<sup>2</sup>

It is the least attractive side of the churches that is disclosed in these records, as might be expected. Evidences of devotion and learning, of self-sacrifice and patient up-building of Christian communities in the wilderness, must naturally be sought elsewhere than in lawsuits. Still, these pages do give us one glimpse of Puritan ministers at their best. Eliot, the apostle to the Indians, and Daniel Gookin, the historian, were run down while crossing Boston harbor to visit their converts interned during King Philip's War. Apparently the collision was actuated by spite because these two ministers were befriending the Christian Indians against the violence of public opinion excited by war-fever.<sup>3</sup>

#### CONFLICT OF LAWS

The subject of conflict of laws or private international law concerns the problems which arise when a suit in one state involves citizens or residents of another state, or property or transactions in another state. In such situations it is necessary to decide whether to apply the rules of law in force at the place of suit or those of the other state. Two independent nations need not be involved. It is enough that each political unit concerned has the power of making laws different from those of the other unit. When the legal units are small, like our forty-eight states, problems of conflict of laws are likely to occur often. Although the colonies were subject to the English Crown, which could theoretically supervise their legislation, there was enough practical independence to make the inhabitants of another colony in some sense foreigners. Indeed, the existence of a single political sovereignty in the English Crown does not prevent each portion of the Empire from being a separate legal unit for the purposes of judicial

<sup>1</sup> Below, pp. 305-306.

<sup>2</sup> Below, p. 843. Another South Church case is Hill, p. 940. See also Adams, p. 596.

<sup>3</sup> Newcombe, pp. 695-697.

proceedings. Thus Ireland, which England controlled much more firmly than the American colonies, was treated as in a different legal jurisdiction by an English judge during our period.<sup>1</sup> The nearness of the colonies to each other, frequent migration of settlers, and constant commercial intercourse, especially by sea, brought about a good many cases in the Suffolk County Court involving residents of or transactions in other colonies. It was also not unusual to have litigation about inhabitants of England and other countries, or acts on the high seas and in distant ports.

The laws of the various colonies were not yet sufficiently developed to present many sharp clashes between Massachusetts law and that of the other colony or country incidentally involved in a controversy. Still, it is interesting to collect the cases here published in which non-residents, foreigners, and transactions outside Massachusetts played a part.

Non-residents of Massachusetts were allowed to sue in the courts, and indeed a special court was authorized to assure justice to strangers.<sup>2</sup> The repeal of this statute in 1672 allowed strangers to sue in the ordinary courts;<sup>3</sup> this coincided with one stage of the prolonged controversy growing out of the voyage of the ketch *Recovery*.<sup>4</sup> In *Gydeon v. Gibbs*,<sup>5</sup> a non-resident plaintiff makes a fervent appeal for justice in reliance on the scriptural command "that the same Law should bee for the Stranger and sorjourner as for the Issraellits." Non-residents were also subject to suit, and the frequent New England practice of attachments upon the property of non-residents was already in operation.<sup>6</sup> An attachment against a non-resident was nullified because neither his person nor any goods were in the jurisdiction.<sup>7</sup> When the defendant was merely a resident of another county in Massachusetts, the difficulty of reaching him in the Suffolk County Court was less serious, and the method employed is illustrated by the

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<sup>1</sup> *Carteret v. Petty*, 2 Swanston 323 (1675).

<sup>2</sup> Title Courts, sec. 8, in Whitmore, *Colonial Laws, 1672-1686*, p. 37.

<sup>3</sup> *Id.*, p. 207.

<sup>4</sup> Below, pp. 153, 178-180.

<sup>5</sup> Below, p. 624.

<sup>6</sup> *Whitcomb v. Burnam*, p. 10. On the history of foreign attachment, which was derived from the custom of London, see Beale, "The Exercise of Jurisdiction *in rem* to Compel Payment of a Debt," *Harvard Law Review*, xxvii. 107.

<sup>7</sup> *Warner v. Franklyn*, pp. 1055-1056.



case of Captain Price.<sup>1</sup> Strangers in Massachusetts who violated the criminal law of the colony were, of course, liable to prosecution.<sup>2</sup> A stranger's excuse of ignorance of the law relating to the sale of liquor to Indians proved of no avail;<sup>3</sup> but a similar request for clemency by a stranger who killed a sheep late on Saturday night led to a light punishment.<sup>4</sup> Ignorance of the law was successfully urged as a defense by Calloe, a sailor who found a box floating in Boston harbor and took silver from it. He excused his failure to cry it as lost property by saying that it was not usual in his country to cry flotsam and jetsam. On returning the property he was acquitted.<sup>5</sup> The frequent occurrence of foreign names in these pages indicates that persons who were not British subjects were fairly numerous in Massachusetts and took their share in litigation.

Acts outside of Massachusetts were involved in a considerable number of cases. Thus we find suits for breach of a Rhode Island contract;<sup>6</sup> for New York debts, one debt involving the period of Dutch rule;<sup>7</sup> on English bonds;<sup>8</sup> and on a bill of exchange drawn in France on a drawee in London who accepted but did not pay.<sup>9</sup> An agent who had been appointed by the Suffolk County Court to manage Rhode Island land belonging to a Massachusetts decedent was sued by the heirs and executors for an accounting of the profits from the land.<sup>10</sup> Alleged wrongful acts on the high seas or on foreign soil are not uncommon in connection with voyages.<sup>11</sup> Suits were freely allowed for foreign torts, for example, carrying off Indian servants in Rhode Island,<sup>12</sup> and the misappropriation of merchandise in New York involving seizure by the Dutch in war.<sup>13</sup> In an action for slander in

<sup>1</sup> Below, pp. 27-28.

<sup>2</sup> Harding and Tillinghast, p. 519; Hyde, p. 677.

<sup>3</sup> Simmons, pp. 808-809.

<sup>4</sup> Evered, p. 868.

<sup>5</sup> Below, p. 1156.

<sup>6</sup> Usher v. Timberlack, pp. 154-155.

<sup>7</sup> Dinely v. Steenwick, pp. 166-173; Keen v. Dafforn, pp. 1123-1124.

<sup>8</sup> Hutchinson v. Paine, pp. 530-536; Purkis v. Winder, pp. 1002-1005.

<sup>9</sup> Hunt v. Warren, p. 1170.

<sup>10</sup> Lamb v. Williams, p. 1051.

<sup>11</sup> For instance: More v. Jones, pp. 156-158; Miller v. Risco, pp. 277-285; Snith v. Rand, pp. 621-624; Darvall v. Dudson, pp. 364-369; White v. Lemoigne, p. 988; Davis v. Legg, pp. 504-507.

<sup>12</sup> Sweete v. Gibbs, pp. 742-743.

<sup>13</sup> Dudson v. Darvall, pp. 385-387. See also Wensley v. Davis, pp. 856-857.



Connecticut, the defendant was ordered to make a public retraction in Connecticut as well as in Massachusetts.<sup>1</sup> In some prosecutions, the crimes originated outside Massachusetts. Rebecca Littlefield was convicted for having an illegitimate child which was begotten in Plymouth Colony,<sup>2</sup> and Curle for fraudulently carrying goods from England to New England.<sup>3</sup> Several men were prosecuted for deserting the service of the United Colonies, but it does not appear where the desertions took place.<sup>4</sup>

Only one instance is found of a suit on a foreign judgment. This was brought by the assignee of a New York judgment obtained during the Dutch occupation of New York.<sup>5</sup>

The estates of decedents affected persons outside of Massachusetts in several cases. The most interesting is *Swift v. Smith*,<sup>6</sup> brought by the heirs of a Massachusetts decedent against a man in possession of Narragansett land, now in Rhode Island but then claimed by Connecticut, which was alleged to be part of the estate. The case indicates the possibility of differences between the inheritance laws of Connecticut and Massachusetts. In settling the *Matthews* estate<sup>7</sup> mention is made of land at Block Island, probably referring to Rhode Island territory claimed for a time by Massachusetts. The insolvent estates of Massachusetts decedents were often subject to claims by non-residents, whose interests were adequately safeguarded by court orders.<sup>8</sup> The property of non-resident decedents, as for instance that of a Jamaican, and of an Englishman who died at sea,<sup>9</sup> was sometimes administered in Massachusetts as provided by statute. *Alford v. Endicott*<sup>10</sup> brings in administration proceedings in England and Maryland.

Runaway servants from other colonies must have been common,

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<sup>1</sup> *Danson v. Ellitt*, p. 1123.

<sup>2</sup> *Below*, p. 600.

<sup>3</sup> *Below*, pp. 628-629.

<sup>4</sup> *Matthews*, p. 436; *Combes*, pp. 436, 440-441; *Cann*, p. 439.

<sup>5</sup> *Sharp v. Rider*, pp. 359-363.

<sup>6</sup> *Below*, pp. 680-682.

<sup>7</sup> *Below*, p. 1106.

<sup>8</sup> *Temple Est.*, pp. 476-477; *Price Est.*, pp. 479-480; *Howlet Est.*, p. 871; *Elkins Est.*, p. 1010.

<sup>9</sup> *Whitmore*, *Colonial Laws*, 1672-1686, p. 158; *Deacon Est.*, pp. 29-30; *Biggleston Est.*, p. 188.

<sup>10</sup> *Below*, pp. 726-735.

and article VIII of the New England Confederation in 1643 embodied a rudimentary fugitive slave law.<sup>1</sup> It also required the Commissioners to make agreements and orders about receiving persons "that remove from one Plantation to another, without due Certificates." This article was applied by the Suffolk County Court in the numerous proceedings about Hannah Bumpas, who was returned to Plymouth.<sup>2</sup> Although the New England Confederation did not include New York, the court ordered the return to that colony of Cornish, who had obtained a discharge from his master through duress during the Dutch occupation.<sup>3</sup> The converse situation of a servant who ran away from Massachusetts to another colony produced an attempt to bring back an Indian squaw from Connecticut, and depositions were taken in that colony.<sup>4</sup>

Ashton v. Gibbs<sup>5</sup> involved the co-operation of the authorities of Plymouth Colony and the Bay Colony in the recapture of a man who was escaping civil arrest by going into Plymouth Colony.

All these cases indicate that the difficulties of conflict of laws were not particularly serious during the period covered by these volumes. In only one case, Swift v. Smith,<sup>6</sup> is there a suggestion that differences between the laws of the various colonies were of significance.

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<sup>1</sup> Macdonald, *Select Charters, 1606-1775*, p. 99.

<sup>2</sup> Below, pp. 193, 219, 225, 524.

<sup>3</sup> Below, pp. 560-561.

<sup>4</sup> *Danson v. Elliott*, pp. 1086-1092.

<sup>5</sup> Below, pp. 347-358.

<sup>6</sup> Below, pp. 680-682.

RECORDS OF THE  
SUFFOLK COUNTY COURT  
1671—1680

PART I



# RECORDS OF THE SUFFOLK COUNTY COURT 1671-1680

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Att a County Court held at Boston 31<sup>th</sup> of y<sup>e</sup> 8<sup>th</sup> m<sup>o</sup> 1671  
Present

RI: BELLINGHAM esq <sup>r</sup> Gou <sup>r</sup>	Major ELI: LUSHER	}	Esq <sup>rs</sup>
JN <sup>o</sup> LEUERETT esq <sup>r</sup> Dep <sup>t</sup> Gou <sup>r</sup>	EDWARD TYNG		
	WILLIAM STOUGHTON		

Grand Jurie was the Same of Julie Court

## Jurie of Tryalls

Cap <sup>t</sup> Sam: Scarlett	Jacob Newell	Joseph Joy
Benj <sup>a</sup> Negus	James Blake	Nath: Fisher
Hopestill Foster Ju <sup>r</sup>	Joseph Weeks	Jn <sup>o</sup> Baker
Jn <sup>o</sup> Crofts	Sam <sup>ll</sup> Belchior	Jn <sup>o</sup> Thurston

## [SHEAFE v. HAWKINS]

Sampson Sheafe plaintiff against Thomas Hawkins Defend<sup>t</sup> in an Action of the case for not giueing possession of certaine howses & Land lieing in Boston due to said Sheafe vpon or by a Deed or Mortgage for the same forfeited bearing Date the fiuteenth of June One Thousand six hundred seauenty & one refference thereto beeing had with other Due Damages according to Attachm<sup>t</sup> Dated the 6<sup>th</sup> of October 1671 After the Attachm<sup>t</sup> & Euidences in the case produced were read comitted to the Jurie & are on file with the Records of this Court the Jurie brought in their Verdict they found for the plaintiff that the Defendant giue him possession according to Attachm<sup>t</sup> & costs of Court w<sup>ch</sup> is twenty fue shillings & eight pence.

Execucion Issued 5<sup>th</sup> of y<sup>e</sup> 11 m<sup>o</sup> 1671

[Attested copies from the Suffolk registry of deeds (S. F. 1458.9) show that in 1667 Hawkins mortgaged the property in question to Mr. Thacher for 200/ at six per cent interest, payable in 1671, in which year he mortgaged the same property to "Mr. Sampson Scheafe" for 177l 15s 8d at



six per cent, payable "within the said yeere." Sheafe's account, presented during a later development of the case, follows (S. F. 1458.11):

1671	Thomas Hawkins of Boston. Inholder. D <sup>r</sup>	
June 15 <sup>th</sup>	To ballance due to mee for w <sup>ch</sup> hee gaue mee a writing for his house & Land . . . . .	177:15:08
	To Cash. p <sup>d</sup> m <sup>r</sup> Thomas Thacher Sen <sup>r</sup> w <sup>ch</sup> s <sup>d</sup> Hawkins owed him for 200 <sup>li</sup> principall hee rec <sup>d</sup> at interest due to the last of May . . . . .	218:15:00
Octob <sup>r</sup> 19 <sup>th</sup>	To Cash p <sup>d</sup> charges in Suing him for possession & Levying the Execution . . . . .	001:07:08
	To ditto p <sup>d</sup> Recording the severall mortgages & writings . . . . .	000:17:00
	I disbursed on the house & Land viz:	
Aug <sup>o</sup>	2000. boards. 3 <sup>li</sup> Locks. 5 <sup>s</sup> . . . . .	003:05:00
Sept.	Carpenter & Bricklayer . . . . .	013:07:03
Decemb <sup>r</sup>	Goo: Drury for Shingling the house . . . . .	005:05:00
	Goo: Cooper for whitening the house . . . . .	002:10:00
May. 7 <sup>th</sup>	Joshua Atwater for Nayles . . . . .	001:18:01
	Interest of 218 <sup>li</sup> 15 <sup>s</sup> 1 <sup>d</sup> May 71 to 20 <sup>th</sup> March 1671 being a yeare 3m <sup>o</sup> 3 dayes . . . . .	024:12:00
	Interest of 186 <sup>li</sup> from 15 <sup>th</sup> of June to March 20 <sup>th</sup> being nine monthes . . . . .	018:18:00
	Interest of 24 <sup>li</sup> 5 <sup>s</sup> disburst on the house till it was sold . . . . .	000:13:00
	So the house & Land cost mee . . . . .	467:05:04
		49:14:08

And the charge of two actions commenced ag<sup>t</sup> mee since for which I tooke out no Execution I calculate about 15<sup>s</sup> besides writings between m<sup>r</sup> Howlett m<sup>r</sup> Stoughton & my Selve.

1671	P <sup>r</sup> Contra is C <sup>r</sup>	<i>li s d</i>
Octob <sup>r</sup> 19 <sup>th</sup>	per Land & house bought of s <sup>d</sup> Hawkins . . . . .	398:15:00
	I sold one part to m <sup>r</sup> Howlett if hee paide mee ready mony . . . . .	287:00:00
	The rest to m <sup>r</sup> Stoughton . . . . .	280:00:00
		<u>567:00:00</u>

Hawkins's comments on the account follow (S. F. 1485. 10):

Thomas Hawkins his Objection ag<sup>t</sup> M<sup>r</sup> Sampson Sheafes Account

In p<sup>rs</sup> To the 2<sup>d</sup> article wherein hee charges p<sup>d</sup> m<sup>r</sup> Thacher 218<sup>li</sup> 15<sup>s</sup> hee desires to see a discharge & the Mortgage delivd<sup>d</sup> up w<sup>ch</sup> hee made to m<sup>r</sup> Thacher for 218<sup>li</sup>:15<sup>s</sup>:

2<sup>ly</sup> Whereas hee charges 1<sup>li</sup>:7<sup>s</sup> 8. for Suing & Levying the Execution, hee desires to see a particuler account thereof.

3<sup>ly</sup> Whereas hee charges for Recording mortgages & other writings 00:17 hee knowes no reason why hee should beare the charge of Recording his papers besides hee was at his own Liberty whether hee would doe or not & if done it was for his own Security.

4<sup>ly</sup> Whereas hee charges 24<sup>li</sup> 5<sup>s</sup> 4<sup>d</sup> for disburstments &<sup>c</sup> hee knowes no reason

why hee should pay anything for hee puld down better covering then hee put on, besides hee charges for Locks & hee knowes not that the house had need of Locks nor of seuerall other things as whiting &c which was altogether unnecessary charges & all without his order & after hee had s<sup>d</sup> house in his hands.

5<sup>ly</sup> Whereas hee charges for interest of 218:15 — 24<sup>li</sup> 13<sup>s</sup> 10<sup>d</sup> hee doth not see any ground or reason why hee should allow any more then the 218<sup>li</sup> 15<sup>s</sup> that being the full w<sup>th</sup> interest of what hee owed m<sup>r</sup> Thacher for which his house was sold from him & in m<sup>r</sup> Sheafes own Acc<sup>o</sup> hee saith hee bought it in October. 1671. & yet chargeth interest till May 1672 therefore objects ag<sup>t</sup> the 24:13:10.

6<sup>ly</sup> Whereas hee charges for interest of 180<sup>li</sup> — 18<sup>li</sup> 18<sup>s</sup> he cannot understand what hee intends by it, besides before hee had the house in his hands w<sup>ch</sup> he tooke for his satisfaction; and that hee should turn mee out of my house contrary to his promiss & yet afterwards demand interest hee leaves to any indiffirent men to judge the equity of.

7<sup>ly</sup> Hee Sued mee & recovered a judgm<sup>t</sup> ag<sup>t</sup> mee before the mortgage was forfeit yet afterwards charges as in the two Last Articles no less for interest then 43<sup>li</sup> 11:10, contrary to all law or Reason.

8<sup>ly</sup> Whereas hee charges interest for mony Laide out on the houseing; what hee Laide out was after hee had them in his own possession & without any order of mine; besides hee pulls down spoiles & giues away w<sup>t</sup> hee pleases & giues no acc<sup>o</sup> thereof & yet charges for his disburstm<sup>ts</sup> interest at his own pleasure.

9<sup>ly</sup> Further by his own account hee sold the houseing for 567<sup>li</sup> and by the same Acc<sup>o</sup> when hee tooke the house from me I owed him but 396:11<sup>s</sup> 8<sup>d</sup> if m<sup>r</sup> Thachers debt were 218<sup>li</sup> 15<sup>s</sup> but I can proue hee sold the houseing & land for 580<sup>li</sup> So I am wronged in the Sale thereof no less 194<sup>li</sup> whereas I can prove upon Oath. hee saide hee would not take a penny more then his first principall.

Boston 22<sup>th</sup> Aprill. 1675

Thomas Hawkings

Sheafe and Hawkins indulged in much subsequent litigation over this property. See below, pp. 275–7, 416, 564, 684, 705.]

### MILTON v. ELLIOTT

Thomas Milton Attourney of m<sup>r</sup> John Nethway m<sup>rch</sup>t plaintiff against Joseph Elliott Seaman Defend<sup>t</sup> in an Acion of the case for Damage don him the said Milton by carelesenese of him the said Elliott & the rest of the company in keeping no wach aboard the Katch Elizabeth & Mary whereof the said Milton was then Comander, when the said Milton was on Shoare & could not get on board by which carelesenese of the said Elliott & company the said vessell was set on Fire & burned with the goods that were in her to the value of six hundred pounds or thereabouts & due damages according to Attachm<sup>t</sup> Da<sup>t</sup> the 26<sup>th</sup> of Octob<sup>r</sup> 1671 . . . the Jurie . . . found for the Defend<sup>t</sup> Costs of Court

PARKER v. CHAMPEROONE & Comp<sup>a</sup>

Richard Parker of Boston plaintiff ags<sup>t</sup> Cap<sup>t</sup> Francis Champeroone Abraham Corbett & Cap<sup>t</sup> Walter Barefoot Defend<sup>ts</sup> in an Action of Debt due by bond to the sume of one hundred & fowre score pounds & due Damages for non payment according to Attachm<sup>t</sup> Dat the 30<sup>th</sup> of Sep<sup>t</sup> 1671 . . . the Jurie . . . found for the pl<sup>t</sup> the forfeiture of the bond & costs of Court & on y<sup>e</sup> Request of the defend<sup>t</sup> y<sup>e</sup> Court chancired <sup>1</sup> it to one hundred pounds in spetie according to bond y<sup>e</sup> Debt beeing ninety pounds

Execucion Issued 15<sup>th</sup> of 9<sup>br</sup> 1671

## LEUERETT v. ELY

John Leuerett esq<sup>r</sup> one of the Ouerseers of the Last will & testament of Cap<sup>t</sup> John Cullick deceased plaintiff ags<sup>t</sup> Richard Ely Defend<sup>t</sup> in an Action of the case for his not performing his Obligacion vnder his hand & seale bearing date in the Month of January 1663 by the makeing payment of one hundred & fiuty pounds to John Cullick & one hundred & fiuty pounds to Elizabeth Cullick Sonn & Daughter to the [2] said Cap<sup>t</sup> John Cullick according to his obligacion & all due Damages according to Attachm<sup>t</sup> Dat the fue & twentieth Day of October 1671 . . . the Jurie . . . found for the pl<sup>t</sup> the forfeiture of the bond & Costs of Court. The Court vpon mocion of the pl<sup>t</sup> chancired the bond to three hundred & eighteen pounds in Money & Costs of Court twenty seauen Shillings

Execucion Issued y<sup>e</sup> 15<sup>th</sup> of 1<sup>st</sup> m<sup>o</sup> 16<sup>7</sup> $\frac{1}{2}$ .

## WILKINS v. WEBB

John Wilkins plaintiff against Joseph Web Defend<sup>t</sup> in an Action of the case for withholding either by himselfe or his Assignes or by both himselfe & his Assignes a part of that howseing in Boston which is the propper right of the said Wilkins & all other Due Damages according to Attachm<sup>t</sup> Dated the twenty fifth Day of October 1671. . . . the Jurie . . . found for the Defend<sup>t</sup> costs of Court w<sup>ch</sup> was seauen shillings & one penny.

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<sup>1</sup> The earliest example of the verb "chancer" in the New English Dictionary is dated 1798. See earlier examples in the Nation, lxxiv. 12 (N. Y., 1901).

## ADDAMS v. HUDSON

Nathaniell Addams of Boston Turner y<sup>e</sup> Elder Attourney to & for Robert Owen now or late of s<sup>d</sup> Boston Vintn<sup>r</sup> plaintiff against Cap<sup>t</sup> William Hudson Defend<sup>t</sup> in an Acion of the case for withholding & unjustly deteyning the sum of sixty fue pounds seauen shillings & eleven pence of Currant Money of New England from the said Robert Owen which appears to be due to the said Robert Owen from the said William Hudson vpon an Accoumpt made vp betwene them by M<sup>r</sup> Anthony Stoddard Cap<sup>t</sup> William Daus and M<sup>r</sup> Brattle who were appoynted by the Court to Auditt the Acomp<sup>ts</sup> betwene the s<sup>d</sup> Owen & the s<sup>d</sup> Hudson with other due Damages according to Attachm<sup>t</sup> Dat y<sup>e</sup> 28<sup>th</sup> of Septemb<sup>r</sup> 1671 . . . the Jurie . . . found for the Defend<sup>t</sup> Costs of Court twenty sixe shillings.

## MAN v. WHITCOMB

John Man pl<sup>t</sup> against James Whitcomb Defend<sup>t</sup> & the pl<sup>t</sup> not appearing after due calling was declared nonsuited.

## CLARKE v. NICHOLLS

Thomas Clarke late of Plymouth plaintiff against the Goods or Estate of John Nicholls sonn to Mordecay Nicolls late of Boston deceased in the possession of John Wiswall Sn<sup>r</sup> Guardian to the said John Nicholls Def<sup>t</sup> in an Action of the case for non payment for disburstments which the s<sup>d</sup> Clarke hath laid out in building a new howse upon the Ground & repaying the old howseing of the said John Nicholls at the request of his Mother late wife to the said Thomas Clarke & vpon her promise that the said Clarke should be [3] paid for the same out of her Estate which Disburstments haue beene apprized at seauenty fue pounds with interest & other due Damages according to Attachm<sup>t</sup> Dat the 26<sup>th</sup> of 8<sup>br</sup> 1671 . . . the Jury . . . brought in a spetiall verdict Viz<sup>t</sup> If man & wife haue power to make bargains one with another y<sup>t</sup> will stand good in Law then wee finde for the plantiffe seauenty fue pounds & Costs of Court if not wee finde for the Defend<sup>t</sup> costs of Court. The Magistrates on perusall of this case & Verdict Judg<sup>d</sup> for the Defend<sup>t</sup> costs of Court the plaintiff appealed from this Judgment to the next Court of Assistants & the said Thomas Clarke as prinsipall in seauenty fue pounds & John Saffin & Anthony Chickley in thirty fue pounds apeice acknowledged



themselves bound to the Tresurer of the County of Suffolke & parties concerned on condicion that the s<sup>d</sup> Clarke shall prosecute his Appeale from the Judgment of this Court to the next Court of Assistance to efect.

[On June 28, 1660, James Balston of Boston, ship-carpenter, deeded to Mordecai Nicholls a house and land in Boston "on highway next to Mr. Clarke" (S. F. 1404.5). The house was a modest one of two stories, with two rooms to a floor. Mordecai appears to have been a seafaring man turned shopkeeper; he dealt in canvas, cottons and woollens. His estate, valued on April 25, 1664, after his death, included the housing and grounds, 150*l*, a barque and her cargo, 159*l* 18*s* 6*d*; "sow & piggs in the yard," 1*l*; furniture "in the parlor," including one standing bedstead and a trundle bed, 8*l*; the stock of cloth was kept "in the Chamber over the parlor"; the total valuation was 532*l* 17*s* 3*d* (S. F. 1404.7). Shortly after this, the widow Nicholls made an agreement with Thomas Clarke who was to be her next husband. In S. F. 1179.4 is the following copy of this "bargain":

This writing witnesseth. Between Thomas Clarke late of Plymouth, yeoman, and Alice Nicholls of Boston, widow That whereas there is an intent of marriage between the s<sup>d</sup> partys the Lord succeeding theire intentions in convenient time: The Agreement therefore is that the houseing & Land now in the possession of the s<sup>d</sup> Alice Nicholls shalbee reserved as a Stock for her Son, John Nicholls for him to enjoy & posses at the age of twenty and one years in the meantime to bee improved by the parents towards his Education: Also that what Estate of hers the s<sup>d</sup> Alice shalbee found & comitted to the s<sup>d</sup> m<sup>r</sup> Clarke — if it should so please the Lord to take the s<sup>d</sup> Alice out of this Life before the s<sup>d</sup> Thomas Clarke Shee shall then have then power to dispose of all the s<sup>d</sup> Estate sometimes hers so as it seemes good unto her: — moreover — if it shall please the Lord to take away the s<sup>d</sup> Thomas Clarke by death, before the s<sup>d</sup> Alice She Surviving, then the s<sup>d</sup> Alice shall have and enjoy her own Estate Shee brought with her or the value thereof and two hundred pounds added thereto of the Estate Left by the s<sup>d</sup> Thomas Clarke all which the s<sup>d</sup> Thomas Clarke doth hereby promise and binde himselfe to allow of and performe as a Covenant upon theire marriage—In Witness of all which, the s<sup>d</sup> Thomas Clarke hath Signed and Sealed this present writing unto Peter Oliver and William Bartholmew of Boston for the use and behoofe of the s<sup>d</sup> Alice Nicholls. Dated this twentieth day of January, 1664.

per me Thomas Clarke & a Seale

After this agreement a somewhat different arrangement to safeguard the stepson's rights in his mother's property was concluded by the Court on February 3, 1664/5 (S. F. 1404.7):

At a County Court held at Boston 3<sup>d</sup> Feb<sup>o</sup> 1664

This Court being informed that since the Inventory of Mordecai Nicholls was produced in Court, the providence of god by the loss of the vessall & seu<sup>r</sup>all debts due to the s<sup>d</sup> Estate thereby falling short to the value of two hundred pounds & odde & the widdow being ready to dispose of herselfe: The Court judged it



meete to order that the house & Land mentioned in the Inventory at one hundred & Fifty pounds shalbee & is hereby secured to bee part of John Nicholls hir Sonnes portion; And that the s<sup>d</sup> widdow Alice Nicholls his mother shall Satisfy & pay unto her s<sup>d</sup> Sonn — at the age of Fourteen yeares the Sume of Fifty pound more besides the s<sup>d</sup> house & Land to his Guardian to bee improved for his use till hee come to age, & the mother to haue the use of the Sonnes portion — till that time hee come of age to choose his Guardian; for his Education—, & in the meane time the mother & Cap<sup>t</sup> Clapp are appointed his guardians & that the mother the widdow haue all the rest of the Estate as her portion — & in case the Childe dye before hee attaine his age, the mother to haue the whole.

Allowed & approved of by the Court

Edw: Rawson Record<sup>r</sup>

Having married the widow Nicholls, Thomas Clarke moved into her house, which proved to be somewhat cramped. The neighbors reported their conversation (S. F. 1179.9):

Judith Snowsell aged about Seaven & Thirty yeares deposeth upon oath . . . m<sup>r</sup> Clark & his wife being at o<sup>r</sup> house, they began a discourse about the house they lived in: Shee saying it was old and that hee would doe well to build her a new house But m<sup>r</sup> Clarke made answer that he would never doe any such thing as to build upon anoth[er] mans ground Then shee replied y<sup>t</sup> hee needed not to feare his satisfaction againe in case hee did build for her for shee said the rent of her house would in time pay him: But m<sup>r</sup> Clarke made answer that such paym<sup>t</sup> would not doe, For hee said y<sup>t</sup> would bee a long time in paying indeed And further this depon<sup>t</sup> saith that shee told hir husband that what estate hee had was hers: and what was hers was her owne And further saith that her husband demanded to see her Inventory But shee tould him hee should never see it while shee lived And further this depon<sup>t</sup> Saith that m<sup>rs</sup> Lake being at o<sup>r</sup> house told this deponent that shee was going to see m<sup>s</sup> Clarke, for shee was informed as shee said that her husband would not allowe her things that were fitting for her, but was very Churlish and dogged to her. But this depon<sup>t</sup> tould m<sup>rs</sup> Lake that m<sup>s</sup> Clarke wronged her husband in the same very much for hee would allowe things y<sup>t</sup> were Sufficient for her but shee would not allowe thereof her selfe And thereupon this depon<sup>t</sup> went along w<sup>th</sup> m<sup>s</sup> Lake to m<sup>r</sup> Clarkes house at that time when m<sup>s</sup> Lake did aske m<sup>s</sup> Clarke if her husband would not allowe her things y<sup>t</sup> were Convenient for her: For shee tould her y<sup>t</sup> shee heard hee would not. But shee did then disowne to m<sup>s</sup> Lake and my selfe what was reported concerning her husband as to that particular And further this deponent Saith that shee being at m<sup>s</sup> Clarkes house one day the said m<sup>r</sup> Clarke came in and brought w<sup>th</sup> him a small leg of mutton and a peece of fresh beefe and shee found fault with him for bringing in soo much meate and tould him y<sup>t</sup> a pound of beefe at a tyme was enough for to bring in: But hee made answer that if shee did not like it shee might let it alone for hee said hee would not make him selfe a laughing stocke to bring in soo little meate at a tyme And further this deponent Saith not

Taken upon oath this 30<sup>th</sup> octob<sup>r</sup> 1671

Before mee Humphry Dauie <sup>1</sup> Comiss<sup>r</sup>

<sup>1</sup> Son of Sir John Davie, Bt., and father of John Davie, Harvard, A.B. 1681, who was informed of his succession to the baronetcy when working on his farm in Groton, Connecticut.

William, John and Andrew Clarke, aged respectively 37, 30, and 25 years, deposed (S. F. 1179.11-12) that their father, upon their stepmother's continued request, and her promise to pay for it, built the new house, leanto, and shop in Boston, and repaired the old one; the improvements were appraised at 75*l* but cost above 100*l*. Also (S. F. 1179.7):

The testimony of Rodger Clap Aged sixty two years or thereabouts. Saith that m<sup>r</sup> Thomas Clarke hauing taken Downe one end of the howse which was Mordecaey Nicolls & built a new Roome in the place did shew me the new roome & said that it had cost him a great deale of money but hee did keepe an Account of itt & did intend that it should bee in part of that two hundred pounds which his wife was to have out of his Estate after his death this deponent asked him how if his wife should dye before him he Answered then hee would freely giue it to John and would have noething for itt.

Taken upon Oath the 31st of 8th m<sup>o</sup> 1671 before mee Anthony Stoddard Comiss<sup>r</sup>

Owned in Court by Cap<sup>t</sup> Clap . . . as Attests Free Grace Bendall Cler.

Alice Clarke died before her second husband. Her son John Nicholls, then aged seventeen, chose as guardian Elder John Wiswall (S. F. 1179.8), who was obliged to seek the aid of the court to obtain possession of his ward's house, land, and 50*l*, as appears by the following record (S. F. 1179.3):

At a County Court held at Boston 25<sup>th</sup> of 5 m<sup>o</sup> 1671

Elder John Wiswall guardian to John Nicholls pl<sup>t</sup> against Thomas Clarke Defend<sup>t</sup> in an Action of the Case for with holding an Estate left by his mother Alice Clarke by will which will was made according to contract before her marriage with the said Thomas Clarke beeing formerly the Estate of Mordecaey Nicolls his father Deceased being an Estate for the most part of moveables & Debts & all Due Damages according to Attachm<sup>t</sup> & at the 20<sup>th</sup> of the fifth month 1671 After the Attachm<sup>t</sup> & Evidences in the case produced were read comitted to the Jurie & are on file with the record of this Court the Jurie brought in their verdict they found for the plaintiff, that the Defend<sup>t</sup> deliver all y<sup>e</sup> Estate now in his Custody or that he hath any wayes disposed of or did belong to his Late wife Alice that was hers before marriage with him except what was disposed of by a former verdict this is to be deliuered to the plaintiff for the use of John Nicholls or two hundred pound damage in money & costs of Court.

Thomas Clarke then sued his stepson, as appears from the entry, in order to recover the cost of repairing the old house and building the new one. In his "Reasons of Appeale" from this judgment, dated February 28, 1671/2 (S. F. 1179.8), Thomas Clarke rehearses the fact of his contract with the widow Nicholls and declares that the court order of February 3, 1665, had never been made known to him, nor had her first husband's inventory. He argues that if his wife had had the right to devise property by will, she had the right to make a "bargain" with

her future husband, and that this pre-nuptial agreement was a valid contract of which the court should have taken cognizance. "The Jurys verdict being as it is, I am doubtfull whether the Honorable Court Considered my Case as it is Circumstanced per the S<sup>d</sup> Contract." He concludes (S. F. 1179.8):

My Wife & I although as man & Wife one, in personall relation yet Considering our Relation to y<sup>e</sup> Contract two in Estates . . . & Soe Shee noe femm Couert nor under Couert Barron — And might as well make bargaines with mee in hir Life as make a will at hir Death, and If Shee hath power to giue mee a legacy, much more hath Shee power to pay hir debts, debts being allways to bee paid before Legacys. . . .

Instead of admitting an appeal, the Court of Assistants apparently ordered a review of the case by the same court. This was done at the Spring session of 1672 — see pp. 98-9, below.]

#### ATWATER v. ELY

Joshua Atwater plaintiff against Richard Ely Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat y<sup>e</sup> 21<sup>th</sup> of 7m<sup>o</sup> 1671, the pl<sup>t</sup> withdrew his Acion.

#### PATTEN v. NAYLOR

Thomas Patten Attourney of Nathaniell Patten plaintiff against Edward Naylor & Richard Walker Defend<sup>ts</sup> according to Attachm<sup>t</sup> Dat y<sup>e</sup> 9<sup>th</sup> of Octob<sup>r</sup>: 1671, the Acion beeing cal<sup>d</sup> Edward Naylor appeared in open Court & acknowledged a Judgment against himselfe & Estate of eighty pounds vnto Thomas Patten aboues<sup>d</sup> which the Court Chancired to fiuety pounds & one shillinge.

Execucion Issued for 51<sup>1i</sup> 1<sup>s</sup> 00<sup>d</sup> y<sup>e</sup> 4<sup>th</sup> of x<sup>br</sup> 1671

#### GREENOUGH v. HAZELDEN

Elizabeth Greenough Attourney of her husband William Greenough pl<sup>t</sup> against John Hazelden Defend<sup>t</sup> in an Acion of the case for better security of a bond of forty three pounds with condicion to pay the sume of twenty one pounds tenn shillings in money & other due damages according to Attachment Dated the 17 Day of Octob<sup>r</sup> 1671 . . . the Jurie . . . found for the Defend<sup>t</sup> Costs of Court

#### HALLETT v. MANSFEILD

George Hallett plaintiff against Paul Mansfeid Defend<sup>t</sup> in an Action of the case for withholding a Debt of sixteene pounds due to the s<sup>d</sup>

Hallett per Bill for a servant he sould the said Mansfeild with Due Damages according to Attachm<sup>t</sup> Dated the twelveth Day of the sixth Month 1671 . . . the Jurie . . . [4] found for the plaintiff seauenteene pounds Damage according to bill & Costs of Court twenty eight shillings & two pence.

Execucion Issued 15<sup>th</sup> of 9<sup>br</sup> 1671

#### NORDEN v. AUIS

Samuell Norden plaintiff against William Auis Defend<sup>t</sup> in an Action of Debt of Eleuen pounds or thereabouts due by Booke & due Damages according to Attachm<sup>t</sup> Dated the 20<sup>th</sup> of October 1671 . . . the Jurie . . . found for the plaintiff thirteene pounds eighteene shill & six pence Damage & Costs of Court twenty fowre Shillings & tenn pence.

#### SMITH v. CARTWRIGHT

John Smith Sen<sup>r</sup> of Dorchester plaintiff against Arthur Cartwright of s<sup>d</sup> Dorchester Defend<sup>t</sup> in an Action of the case for slandering his Sonn John Smith in sayeing hee broke into his howse & tooke away nine pounds & tenn shillings in money; & positiuely chargeing him to be the person that did it, & no other & this to the great reproach of the said John Smith & his freinds & heereby takeing away his good name both at home & abroad, with all due damages according to Attachm<sup>t</sup> Dated 18 7m<sup>o</sup> 1671 . . . the Jurie . . . found for the plaintiff twenty pounds or an Acknowledgm<sup>t</sup> to the Courts Satisfaction & also the same acknowledgem<sup>t</sup> at Dorchester at a publique Towne Meeting & costs of Court forty one shillings & tenn pence.

#### ATKINSON v. TRUMBLE

Theodore Atkinson senior plaintiff against John Trumball defend<sup>t</sup> according to Attachm<sup>t</sup> Dated y<sup>e</sup> 26<sup>th</sup> of October 1671 y<sup>e</sup> pl<sup>t</sup> not appearing after due calling was nonsuited.

#### WHITCOMB v. BURNAM

James Whitcomb plaintiff against the Goods Debts or Estate of Thomas Burnam of Barbados Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 25<sup>th</sup> of 8<sup>br</sup> 1671 The pl<sup>t</sup> not appearing was declared nonsuited.



## NEWCOMB v. NAYLOR

Andrew Newcomb plaintiff against Edward Naylor Defend<sup>t</sup> in an Action of Debt of Nine pounds three shillings in money due by bill & due Damages according to Attachm<sup>t</sup> Dated the fourth of the sixth m<sup>o</sup> 1671 . . . the Jurie . . . found for the plaintiff nine pounds eight shillings money Damage & costs of Court twenty seauen shillings & eight pence.

## GEFFORD v. ATHERTON

John Jefford

## HUCHINSON v. DOUTY

Eliakim Huchinson assigne of Edward Rushworth or whomeeuer else conserved plaintiff against Thomas Doughty as prinsipall, & James Grant of Yorke Peter Grant & John Taylor as seuerty or either of them Defend<sup>ts</sup> in an Action of the Case for forfeiture or breach of Bond or obligacion of twelue hundred [5] pounds vnder there hands & seales bearing date the first Day of June 1665 for non performance of a Couenant or Agreement of the Date abouesaid vnder the hand & seale of the s<sup>d</sup> Tho: Doughty with other due Damages according to Attachm<sup>t</sup> Dated 19<sup>th</sup> of Sept<sup>br</sup> 1671 . . . the Jury . . . found for the plaintiff the forfeiture of the bond & costs of Court which was thirty six shillings.

Execucion Issued for 1201<sup>1i</sup> 16<sup>s</sup> 00 y<sup>e</sup> 5<sup>th</sup> of 11 m<sup>o</sup> 1671

## PATTEN v. WISE &amp; BELCHIOR

Thomas Patten Attourney of Nathaniell Patten of Dorchest<sup>r</sup> plaintiff against Andrew Belchior of Cambridge & Joseph Wise of Roxbury senior in an Action of the case for the forfeiture of a bond of twenty pounds for non payment of a Debt of tenn pounds eight shillings with the allowance for forbearance as more fully appears by the condicion of the said bond & due Damages according to Attachm<sup>t</sup> Dat the 25<sup>th</sup> of Octob<sup>r</sup> 1671 . . . the Jurie . . . found for the plaintiff the forfeiture of the bond & Costs of Court thirty six shillings.

Execucion Issued for 21<sup>1i</sup> 16<sup>s</sup> 00<sup>d</sup> y<sup>e</sup> 26<sup>th</sup> of x<sup>br</sup> 1671

## THAIR v. PARSONS

Richard Thaire of Brantry pl<sup>t</sup> ags<sup>t</sup> William Parsons of Boston Joyner Defend<sup>t</sup> in an Action of review of an Action of y<sup>e</sup> case comenced



by the said William Parsons against the said Richard Thaire at a County Court held at Boston in Apr<sup>r</sup> last & also obtayned a Judgment from the said Court to the vallue of seauenty six pounds fue shillings & costs of Court forty fue shillings & eight pence (which complaint) was for disburstm<sup>ts</sup> laid out & payd by the said William Parsons about the building of a Katch & due Damages according to Attachm<sup>t</sup> Dat the 24<sup>th</sup> Day of Octob<sup>r</sup> 1671 . . . the Jurie . . . found for the plaintiff seauenty eight pounds tenn shillings & eight pence Damage & Costs of Court The Defend<sup>t</sup> appealed from this Judgment to the next Court of Assistants & William Parsons as prinsipall in one hundred & fuety pounds & James Euerell & John Williams as suerties in seauenty fue pounds apiece acknowledged themselves bound to . . . prosecute his appeale . . .

#### BACON v. GOLD

Samuell Bacon eldest sonn of George Bacon pl<sup>t</sup> against Edward Gold of Hingham Defend<sup>t</sup> in an Action of the case to the vallue of forty & fue pounds for withholding one third part of a Dwelling howse & seuerall parcells of land lyeing & beeing in hingham belonging to the said Samuell Bacon which were the lands of his said father deceased [6] & also for improueing the said lands aboue fowre & twenty years with all due Damages according to Attachm<sup>t</sup> Dated the three & twentieth Day of October 1671 . . . the Jurie . . . found for the plaintiff one third part of the howseing land & meadow according to Attachm<sup>t</sup> & twenty pounds for improuem<sup>t</sup> & Costs of Court twenty two shillings & fowre pence.

#### *Idem v<sup>r</sup> sus Eund<sup>m</sup>*

Samuell Bacon plaintiff against Edward Gold Defend<sup>t</sup> in an Action of the case to the vallue of forty pounds for the said Edward Gold withholding & refusing to make satisfaction vnto the said Samuell Bacon vpon demand for a Cow & all her increase about fue & twenty years with all due damages according to Attachm<sup>t</sup> Dated the twelft Day of September 1671 . . . the Jurie . . . found for the plaintiff sixteene pounds & costs of Court forty three shillings & two pence.

## COUCH v. BAREFOOT

Robert Couch pl<sup>t</sup> against Walter Barefoot Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat y<sup>e</sup> 25<sup>th</sup> of July 1671 the case beeing called the plaintiff not appearing was declared non suited

## KELLY v. BLOWER

Rodger Kelly plaintiff against John Blower Defend<sup>t</sup> in an action of vnjust molestacion in attaching & captiuating his person & also his fishing shallop in the cheefe<sup>1</sup> of fishing for a considerable tyme by which his men broke ofe from him which were much indebted to him to his great & vnsufferable Damage in a vexatiose manner & without any grounds according to Attachm<sup>t</sup> Dated the 10<sup>th</sup> of Octob<sup>r</sup> 1671 . . . the Jurie brought in their verdict they found for y<sup>e</sup> defend<sup>t</sup> Costs of Court

The Court considering Rodger Kelly<sup>s</sup> vexatiose suite ags<sup>t</sup> John Blower sentanc<sup>d</sup> him to pay forty shillings fine in money to the County according to Law & treble Damages to the John Blower the Defend<sup>t</sup>.

## GOLDEN v. CLEMENTS

Peter Golden Attourney of Walter Barefoot pl<sup>t</sup> against Edward Clements Defend<sup>t</sup> in an Action of the case for not payeing a debt of twenty one pounds & od money owned by the said Clements due by bill or soe much as shall appeare by bill or witnes & due interest & all others due Damages according to Attachm<sup>t</sup> Dated the 24<sup>th</sup> of July 1671 . . . the Jurie . . . found for y<sup>e</sup> Defend<sup>t</sup> Costs of Court the plaintiff appealed from this Judgm<sup>t</sup> [7] to the next Court of Assistants & Cap<sup>t</sup> Walter Barefoot in twenty pounds & Isaac Woodie & George Broughton in tenn pounds apeice acknowledged themselves bound to . . . prosecute his appeale . . .

[“Captain Walter Barefoot chirurgion” was a well-known planter of Dover, N. H., which at this time was included in the Massachusetts jurisdiction. The facts of this case are explained by the following documents and depositions, together with Barefoot’s reasons of appeal and Clements’ answer. The Commissioner’s Court mentioned in the deposition of Elias Stileman is one of the few references we have at this period to a special court instituted in 1651 in order to relieve the County Court.

<sup>1</sup> Height. See New English Dictionary, “Chief,” *sb.*9.

It consisted of seven freemen annually chosen by the freemen of Boston, and authorized by the Court of Assistants to hear and determine all civil actions not exceeding the sum of 10*l*; the commissioners had a clerk and kept records (The Book of the General Lawes and Libertyes 1660, p. 13; Whitmore ed., p. 133). In S. F. 1077 will also be found copy of writ dated July 24, 1671, with return dated August 3; record of bond given by Isaac Woody and Broughton to appeal the case; testimony of Isaac Woodey, similar to Stileman's. Barefoot lost the case on appeal; his bill of costs is here given as a sample of that sort of document.

## S. F. 1077.6

I under written doe promise to pay unto Cap<sup>t</sup> Walter Barefoot of Boston Twenty one pounds nine shillings in goods.

Boston 29: 3. m<sup>o</sup> 64:

per Edward Clements

Vera Coppia as Richard Steleman Cleric paid of this bill five pounds fiftene shillings & 2<sup>d</sup>

per Edward Clements

Sworne per Cap<sup>t</sup> Walter Barefoot y<sup>t</sup> y<sup>e</sup> above written was the hand writing of m<sup>r</sup> Edw: Clements in Commission Court. 3<sup>d</sup> 7: m<sup>o</sup> 1669

## The Deposition of Elias Stileman.

This Deponent Saith y<sup>t</sup> some time in August now last past I heard Cap<sup>t</sup> Barefoot saye upon some discourse passing about a difference y<sup>t</sup> was betweene him selfe & M<sup>r</sup> Edw: Clements y<sup>t</sup> he y<sup>e</sup> sd: Barefoot had as much Silk as came to five pounds w<sup>ch</sup> was made reci<sup>d</sup> upon y<sup>e</sup> back side of a bill or bond under y<sup>e</sup> said Clements hand, these words was Spoken y<sup>t</sup> day y<sup>t</sup> Martin Hall was one board Said Clements ship when Cap<sup>t</sup> Barefoot & said Clements had words or discourse about y<sup>e</sup> Said Silke & further Saith not.

Sworne in Commision Court y<sup>e</sup> 3<sup>d</sup> 7: m<sup>o</sup> 1669 Rich: Steleman Cleric

Vera Coppia as attests Rich: Stileman Cleric

This is a true Coppie as Attests Free Grace Bendall Cler.

Barefoot's power of attorney to Peter Goulding (S. F. 1077.3) follows:

Know all men that I Walter Barefoot of Dover Chyrurgeon have made ordained constituted & appoynted & doe hereby made ordaine constitute & appoynt my trusty freind Peter Goulding of Boston my true & lawfull Attourney for mee & in my place & stead to aske require & receive of & from Richard Cooper or his heires Execut<sup>rs</sup> Administ<sup>rs</sup> or Assignes ten pounds due to mee by bill and a certaine summe in goods due from Edward Clements due by bill & also eight pounds Sterling due from William Wright of Dorchester, by bill or from their or either of their heires Executors Administ<sup>rs</sup> or Assignes And I herby give my sd Attourney full power (if he see cause) the sd debts or any of them & all other due dammages thereon or therby arising to sue for At Law by Action or Actions vnto judgment or Judgments & therupon Execution or Executions to take out & y<sup>e</sup> same to cause to be satisfyed & such satisfaction to receive & to doe & execute or cause to be done & executed all & every other Act & Acts divice & divices in y<sup>e</sup> law whatsoever that I might or could doe if I were personal[ly] present. And I doe & will at all

times rattefy & confirme whatsoever my sd Attourney shall lawfully doe or cause to be done in & about y<sup>e</sup> premesies In witnes whereof I have hervnto put my hand & seale this eighth day of June 1669 & in y<sup>e</sup> xxi yeare of y<sup>e</sup> reigne of King Charles y<sup>e</sup> second &c

Walter Barefoote  
[seal]

Signed sealed & delivered in the presence of vs.  
James Gundry William Smith John Mesinger

S. F. 1077.8

Edward Clements Aged thirty years or there abouts Testifieth uppon Oath that he oweth M<sup>r</sup> Walter Barefoot nothing neither Directly nor Indirectly & that to his knowledge he never gave the Said Barefoot Any bill for the payment of any thing Taken upon Oath this 23<sup>d</sup> of August 1671 before me.

. . . Richard Parker Commis[sioner]

S. F. 1077.4

Walter Barefoot Or Peter Goulding his Attorneys Reasons of Appeale from a Judgment of A County Court held in Boston on the 31<sup>t</sup> of October 1671. in which Action he was plaintiff ag<sup>t</sup> Edward Clements def

First for that his Cause of Action mentioned in the Attachment (to wit) A debt of Twenty one pounds due by Bill owned by the sd Edward Clements due by Bill or soe much as shall appeare due by Bill or Witnes & due interest &c. is sufficiently proved. That there was such A Bill by the testimonie of Isaack Woodey his first oath that five or six pounds was written on A Bill which he then thought was an obligation from the sd Clements: But when he had better be-thought himself being lawfully required did farther testefy that Edward Clements did owne he had given Walter Barefoot A Bill for the payment of Twenty one pounds odd money & that he did see this bill which he the sd Clements owned to be his &c. And secondly Martin Hall his Additionall oath sayeth that Walter Barefoot demaunded the abovesd debt of Edward Clements due by Bill which Edward Clements owned was due. All which is enough to prove there was such A Bill & debt, as by Reference to them Testimonies had doth more at large appeare though thervpon the plaintiff could not have the Judgment of that Court for him wherefore he appealed.

Secondly, Edward Clements his owneing of the wholl sd debt to be due is clearly proved by his paying parte therof, proved by Isaack Woody his first oath, & by Martin Hall his Additionall oath both which doe mention some silke pd in parte. Soe that though the plaintiff was negligent in causeing witnesses to subscribe to the Bill when Edward Clements did subscribe it, that Defect is salved & made vp by cleare proofes that there was such a Bill & is yet unpaid. But because he had not a judgment of that Court for his soe just debt therefore he appealed.

Thirdly As it was in the sd honored Court pleaded that Edward Clements never dealt with the plaintiff much les gave A Bill to him for payment, which plea was weakly grounded on Edward Clement's owne oath (as I suppose) the contrary to which is evinced by Samuel Warkman's bond assigned vnto him p<sup>d</sup> sd Clements by the plaintiff And that there is noe truth in his sd oath appeareth plainly by his owne acknowledging otherwise at other times, sworne too by Isaack Woodey & Martin Hall.



fourthly Though some peradventure not well advised would boldly say it was an oversight for Courts to accept off parties owne oathes against one another the plaintiff dares not say soe much. But humbly offereth to the wise Consideration of this Honorable Court & Gentlemen of the Jurey the plaintiff his owne oath that Edward Clements did write the whole Bill as testimony equivalent unto Edward Clements owne oath that he never gave such a Bill. Wherefore leaveing them the plaintiff doubteth not from what is abovesd to wit cleare proofes of A Bill & debt due & parte therof payed but to have the Judgment of this Honorable Court for the same wherefore he appealed.

Pe: Goulding Attorney of Walter Barefoott.

Receaved y<sup>e</sup> 27<sup>th</sup> of 12 m<sup>o</sup> 1671 per Free Grace Bendall Cler

S. F. 1077.5

Answers to the Reasons of Appeale Given in by Peter Goulding Attorney for Walter Barefoote as p<sup>lt</sup> ag<sup>t</sup> Edward Clements defend<sup>t</sup> at a county court held in boston 31 Octob<sup>r</sup> 1671

To the first I answer that wheras he speaketh of A Debt of Twenty one pounds due by Bill and owned by the defend<sup>t</sup> the Defendant utterly denyeth any such bill given by him and for the testimonyes there spoken off: with their Additionall Oathes: the Defendant hopeth they will be by this honoured Court, and Jury so considered off that they will be accounted of no validity

To the second the Answer is the Defendant neuer owned paying of any such Bill only five pounds Captaine Barefoot bought of him in Silke and paid him for it; but if he set downe that; or what else he pleased upon any peice of paper; and say it is receiued upon the within written let him make use of it; only the Defendant hopeth he being not oblidged to what is within shall not suffer for what is without

To the third the Answer is that the plaintiffe therin seemeth himselfe to owne that what was: was only the Bond due to the plaintiffe from Samuel Warkman: which was Assigned to: to y<sup>e</sup> Defendant but being by the defend<sup>t</sup> neuer received he haue as he conceiuethe no reason to pay it

To the fourth I answer that I humbly conceiue the honoured Court more meet to answer it then any other; and therefore shall forbear to make any reply to it  
per Richard Way Attor  
to M<sup>r</sup> Edward Clements

S. F. 1077.12

Walter Barefoot plaintiff his bill of Costs ag<sup>t</sup> Edward Clements Def<sup>t</sup>

At the County Court in Boston Octob <sup>r</sup> 31: 1671	<i>l s d</i>
for two dayes going to M <sup>r</sup> Elias Styleman for coppies of Evidences	0:02:00
pd to him for coppies	0:03:00
pd M <sup>r</sup> Rawson for coppies	0:03:00
the Attachment & serving it	0:01:06
Entering the Action	0:10:00
his owne comeing from Pascataqua to bring coppies of Martin Halls	
Evidence & other things & in goeing hoame to puscataqua againe six	
dayes	0:12:00
his owne Attendance 5 dayes at Court	0:10:00
writing y <sup>e</sup> first evidences & sumoning witness	0:00:00



	<i>l s d</i>
Isaack Woody's attendance 4 dayes . . . . .	0:06:00
pd the Witneses for the first swearing so all twice & Woodys first oath & sumons . . . . .	0:02:00
fyleing ten papers . . . . .	0:01:08
ferryage outwards & hoamward . . . . .	0:00:00
	<u>2:11:02</u>
At the Court of Assistants for Entering the Action . . . . .	0:15:00
pd for County Courts records . . . . .	0:09:00
his Attorneyes Attendance 5 dayes . . . . .	0:07:06
writing reasons of Appeal . . . . .	0:01:06
more to be pd for the judgment because above 10 <sup>ll</sup> . . . . .	0:00:00
fyleing 13 papers . . . . .	0:02:02
	<u>5:06:10</u>
Allowed E R S	1:15:2
	<u>2:11:2</u>
	4:6:04]

## OLIVER v. WOODMANCY

Cap<sup>t</sup> James Oliuer pl<sup>t</sup> against John Woodmancy Defend<sup>t</sup> in an Action of the case for not deliuering possession of a howse & Land in Boston built by the said Oliver on his owne Land & all due Damages according to Attachm<sup>t</sup> Dat the 26<sup>th</sup> of October 1671 . . . the Jurie . . . found for the plaintiff possession of the howse & Land in controversy & costs of Court the Defend<sup>t</sup> appealed from this Judgment to the next Court of Assistants & y<sup>e</sup> s<sup>d</sup> John Woodmancy in three hundred & fuety pounds as prinsipall & Richard Wharton & James Whitcomb in one hundred & seauenty fue pounds apeice as suerties acknowledged themselves bound to . . . prosecute his appeale . . .

## BUCHER v. BASTAR

Mary Butcher plaintiff against Joseph Bastar defend<sup>t</sup> in an Action of trespasse vpon the case for his building & intrenching vpon her Land before the Dore of her Dwelling howse to her great Damage with other due damages according to Attachm<sup>t</sup> Dat y<sup>e</sup> 26<sup>th</sup> of 8<sup>br</sup> 1671 . . . the Jurie brought in a spetiall verdict viz<sup>t</sup> if it be soe that the Deeds of the Defend<sup>t</sup> be according to law we find for the Defendant costs of Court if not wee finde for the plaintiff according to Attachm<sup>t</sup> & costs of Court the Magistrates declared for the defend<sup>t</sup> & y<sup>e</sup> Costs of Court were thirty two shillings & six pence.

## WILKINS v. WEBB

John Wilkins pl<sup>t</sup> ags<sup>t</sup> Nehemiah Webb defend<sup>t</sup> in an Action of the case for sufficient security that the said Nehemiah Webb doth & shall make good vnto the said John Wilkins all that right which he hath sould him of howse & Land as by Deede will more fully appeare & due damages according to Attachm<sup>t</sup> Dat the 27<sup>th</sup> day of July 1671 . . . the Jurie . . . found for the Defend<sup>t</sup> costs of Court which was twenty two shillings & six pence. [8]

## HOPPIN v. DOWNES

Stephen Hoppin plaintiff against Mehitabell Downes the relict of Edmond Downes Marchant deceased Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat y<sup>e</sup> 3 of October 1671 there not appearing that any goods of the Defend<sup>t</sup> was Attached the pl<sup>t</sup> was nonsuited.

## SPRAGUE v. COLLINS

Richard Sprague Master of the shipp Arabella in the behalfe of M<sup>r</sup> Thomas Knights owner of said Shipp plaintiff against Robert Collins defend<sup>t</sup> in an Action of the case for absenting himselfe from the service of the said Knights or his Order & disowening his service whereas he came over a servant to y<sup>e</sup> said Knights which is to his great Damage with other due damages according to Attachm<sup>t</sup> dated the 4<sup>th</sup> of 7<sup>br</sup> 1671 . . . the Jurie . . . found for the defend<sup>t</sup> Costs of Court w<sup>ch</sup> is thirty fiue shillings & two pence.

[A case of kidnapping, the facts of which are explained in Collins's Answer to Sprague's Reasons of Appeal from this Judgment, dated March 4, 1671 (S. F. 1081.3):

Robert Collins being At three severall Courts heild at Boston xecuted Against by m<sup>r</sup> Richard Spreague & m<sup>r</sup> Peter Ledge [spelled *Lidgett* in *S. F. 1081.4*] in his behalf, And they in every of the sayd Courts Cast: vpon Cleere & just evidence, And yett still they rest vnsatisfied witnes their present appeale: & this we humbly present as an answer to his reasons (Soe Caled) viz: first: he begin his reasons with a false Assertion in affirming that the sd Collins Came one bord the Ship Arrabella, Rich: Sprague master as servant to m<sup>r</sup> Knights owner of the sayd ship, which sayd m<sup>r</sup> Knights he never did see nor At that time heard off by name, And therfore Could never become his Servant; But the grounds of his Coming one borde the sayd ship: was by meanes of a suttle Fellow which mett with him in london who sayd he was Botswaine of the ship Arrabella, & he the sayd pretended Botswaine (taken notice of the sayd defendants weaknes & infirmity; he then did improue his oppertunity to gaine his purpose saying that he

was Botswaine of the ship Arrabella as aforesayd; And he then Asked the sayd defendant if he would goe to sea: telling him that he the sayd defended should haue 18<sup>s</sup> in money as soun as he Came one bord the sayd ship & also 18<sup>s</sup> a moneth otherwise vntill he Came to new England, & sayd otherwise that he would be a friend to him all the sayd voyage, the wch made the sayd defendant through ignorence Condecend: But this pretended Botswaine would not leue the sayd defendant but provoked him by his fraudulent to goe one borde, & haled y<sup>e</sup> Ships boat for that end; and promised emediently to Follow himself vpon which this sayd defendant went one bord; expected the sd pretended Boatswaine would sodenly follow (at which time it is possible he might say he was willing to be a servant to new England for his 18<sup>s</sup> per moneth answerable to this sayd pretended boatswaines agreement; And then this sayd defendant waited severall days for this sayd pretended Boatswaine to Come one borde, but he not Coming of many dayes (for he Came not at all) he then inquired of the seamen for this sayd pretended Boatswaine: that Came not a bord; then the seamen one bord laughed at this sayd defendant, & tould him that he was caught by the kidnapper; But they tould him also that when the serchers Came one borde he might gaine a release, And wheras they Glose the matter to manifest the defendant Consent in receiueing Cloaths, his answer is, that he received none that he know off but that that might be to the first 18<sup>s</sup> vallue promised by the pretended Boatswaine; And further, that he received meat and drink one borde: his answer is that he must eate & drink or starue, & did not nor Could not goe ashore; And wheras they doe instance his going one shore at Graves-end, the defendants Answer positively is that he Could haue no opportunity to goe one shore but once, & that was with 3- or 4- to looke after him & that in such blind Corners, & uncoth places, y<sup>t</sup> he knew not which way to goe if he had binn at liberty; & besides the sayd defendant had some hopes of freedom by the serchers as the seamen tould him he might; & did in their presents refuse to give them his name & tould positiuely that he was not willing to goe the voyage; the wch is Cleerely proued And the sayd defendant doth positively affirme that he did even dislike and manifest his dislike in Coming the sayd voyage except it ware at the very first when he waited for the pretended boatswaine to Come one borde; but when the defendant did vnderstand that he was deluded spirited: or ketcht by the kidnaper: or manstealer: he was ever after vtterly unwilling; And wheras they doe say in their resons, that the defendants evidences are negatives; our answer is that we suppose they give that as a reason, because they haue noe better reason; but true reason may inliten them that the defendants evidences may be as positive as the plantives

And for thier third particuler wher as they instance the testimony of the Clark of the passinges to verifie the defendants willingness the defendant doth disowne that ever knew him or see him, And therefore much less to manifest his Concent to proceed one the voyage before him; but the defendant therin shall say little, but he beleue that the honored Court of assistance will not over redily give Credit to the returne of that sd offesser (if any such returne):

And wheras m<sup>r</sup> Sprague charged about 3<sup>li</sup> expended about the sayd Defendant, It is supposed, that is irrationall for generalls to proue the particullers but particulers ought to proue the generall, but only m<sup>r</sup> Sprague himself did party reconcile the busineses for that he did positively affirme that he payd 40<sup>s</sup> to the kidnaper for send the sayd man aboard this also is Cleerly proued: therfor ther is noe need to speake of the kidnapers honesty: least we should Call light Darkness or dark[n]ess

light; & it is doubtfull ther might be a Confederation in it And wheras they affirm that ther was tenn pounds offered in behalf of the defendant, we answer that if it should be true, that argueth not that ther is one penny Due, but men may bye peace at a deere rate, but non can say that ever Collings the defendant ever offered tenn pence; For it is supposed that for a fellow to be trapp and surcumvented by fraude & sent one borde & much meanes used to gitt one shore; not only at Graues end; but by the serchers, And also at tarbay ther stripping off all his Cloase for that end to goe one shore as is Cleerly proved, & yett to be brought away & to be brought as a Captive; In such a Case It is appended that noe Charge ought to be layd upon such a person; & therfor we doubt not but the sayd three Courts did rigteously Cast the plaintive and therfor we hope the honored Court of will Confirme their sayd judgments vnto whose determinations we humbly submit Dated March: 4<sup>th</sup> 1671.

Depositions of three seamen on the Arabella support Collins' statements (S. F. 1081.5, 6). Richard Sprague, master of the Arabella, deposed that he had disbursed 3l 7s for Robert Collins, who "was kept on board with meat drink & lodgen in the ship . . . five weeks before the ship sayled from Gravesend" (S. F. 1081.7). William Hearsy deposed (S. F. 1081.9):

The deposition of W<sup>m</sup> Hearsy aged about 21 years. This deponent witnesseth that the serchers coming aboard the ship of which m<sup>r</sup> Sprage was Comander at Graues End to take notice of the Names of the passengers that then the said Robert Collings did then declare himselfe to the Said serchers that he would not goe in that said Shipp to New England to be a Servant to M<sup>r</sup> Sprague or to be disposed of, then hee y<sup>e</sup> Said M<sup>r</sup> Spreag tould him the Said Collins that he would strip him naked & turne him ashore & he the Said Collins did then expresse him selfe willing to goe ashore though stript but the said Master then would not suffer him, and when the Said Shipp came to Tar-bay he the said Collins would haue gon ashore there, vpon the manifestations thereof he the said Spreag made him strip himselfe naked, & when his cloaths was ofe he the said m<sup>r</sup> Spreag would not suffer him to goe on shore, notwithstanding all the seamen tould the said Collins with the passengers that if they were not willing to goe the said voyage when they came to Graues End they might be cleered & further this deponent sayth not

Sworne in Court this 3 of 9<sup>br</sup> 1671 as Attests FreeGrace Bendall Cler.

Having failed to recover Collins' service, Sprague sued him for his passage money at the next session of the court. See p. 43, below.]

#### WISWALL v. HAMBLETON

Elder John Wiswall & L<sup>t</sup> Richard Cooke guardians to Hannah Hanniford plaintiffs against William Hambleton Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat y<sup>e</sup> 25<sup>th</sup> of Octob<sup>r</sup> 1671 This case was by desire of pl<sup>t</sup> & defend<sup>t</sup> w<sup>th</sup> leaue of y<sup>e</sup> Court continued till next Court



## COOKE v. PRICE

Leu<sup>t</sup> Richard Cooke pl<sup>t</sup> against the goods debts or Estate that was formerly belonging vnto Mr Thomas Broughton & this case was also continued (after seuerall debates about its proceeding) vntill the next Court w<sup>th</sup> the Auditts returne.

[See Cooke v. Broughton, session of 30 January 1671/72, pp. 65-78.]

## WHITCOMB v. BURNHAM

James Whitcomb pl<sup>t</sup> against Thomas Burnam of Barbados defend<sup>t</sup> in an Action of the case for not passing or giuing bills of Exchange for the paying of fiuty & fue pounds in London according to his Ingagem<sup>t</sup> as per a Letter of Credit vnder the hand of said Burnham & James Coats bearing date the 13<sup>th</sup> of Oct<sup>o</sup> 1670 & also a receipt of Benjamin Cotman relating therevnto bearing Date the Second day of December 1670 & for all Damage susteyned for want thereof with other due damages according to Attachm<sup>t</sup> Dat the 3<sup>d</sup> of 9<sup>br</sup> 1671 This Acion was by agreem<sup>t</sup> of y<sup>e</sup> pl<sup>t</sup> & William Goose (Master of y<sup>e</sup> Katch Susanna whereof three Eight parts were attached as y<sup>e</sup> estate of y<sup>e</sup> Defend<sup>t</sup>) & Leaue from the Court now tryed & . . . the Jurie . . . found for the plantiffe sixty eight pounds fiuteene shillings in siluer & costs of Court forty fowre shillings & tenn pence.

BUCKNELL acknowl<sup>d</sup> a Judgm<sup>t</sup>

Samuell Bucknell of Boston Cooper appeared in Court & acknowledged a Judgment against himselfe & Estate of Eleuen pounds twelue Shillings in English goods according to bill To Thomas Wiborne assigne of John Brian of Cittuate

Execucion Issued forth y<sup>e</sup> 10<sup>th</sup> of 9<sup>br</sup> 1671.

BARTH<sup>o</sup> v. TURILL

William Bartholameu Attourney to Major Nehemiah Bourne pl<sup>t</sup> ags<sup>t</sup> Dan: Turill defend<sup>t</sup> according to Attachm<sup>t</sup> Dat y<sup>e</sup> 26<sup>th</sup> of Octo<sup>br</sup> 1671 [9] the plaintiff not producing any procuracion or power from s<sup>d</sup> major Bourne was declared nonsuited.

Administracion to y<sup>e</sup> Rev<sup>d</sup> JN<sup>o</sup> ALLENS Estate

Power of Administracion to the Estate late m<sup>r</sup> John Allens pastor of the Church of Christ at Dedham & of M<sup>rs</sup> Katharine Allen his late wife both deceased is granted to Major Eliazer Lusher M<sup>r</sup> Joseph Dudley & Samuell Hunting who are Ordered to dispose of the said Estates according to the Last will of the said M<sup>r</sup> Allen & the Order giuen by the said M<sup>rs</sup> Allen after the death of M<sup>r</sup> Allen afore-said soe far as the said order agree w<sup>th</sup> M<sup>r</sup> Allens will which is proued in Court

ELIZ<sup>a</sup> SMITH Presented

Elizabeth Smith presented for selling strong liquors without Licence the Court orders that she put in bond of good behauior according to Law or bee comitted to prison.

## RI: BURNUM Presented

Richard Barnum presented for disorders in his howse & reflectiue speeches to the constable that made inquiry about it, y<sup>e</sup> said Barnum appeared & owned & acknowledged his Euill & presented a humble petition to the Court all which beeing considered the Court Sentanc<sup>d</sup> him to be Admonis<sup>d</sup> & pay fees of Court.

PETER EGERTONN & His Wiues Presentm<sup>t</sup>

Peter Egerton & Clemence his wife presented for comitting Fornication before Marriage they appeared & acknowledged their Euill in a humble petition. The Court Sentenc<sup>d</sup> them to pay five pounds in Money fine to the County & fees of Court standing comitted till the Sentence be perform<sup>d</sup>.

JN<sup>o</sup> CHANDL<sup>r</sup> Presented

John Chandler of Roxbury presented for selling beere & Cidar (vpon publique fame) without Licence espetially vpon & about y<sup>e</sup> Last Court Day of Elextion & the Last Generall Trayning dayes at Boston the presentmen<sup>t</sup> not beeing fully prou<sup>d</sup> the Court sentenc<sup>d</sup> him to be Admonish<sup>d</sup> & pay fees of Court.

## Brantry Presented

Brantry Towne beeing presented for insuftiency of the Bridge ouer Manaticott Riuer Deacon Bass appeared for the Towne & declared publicly in Court that it was mended.

## RI: &amp; MARTHA HALL Presented

Richard Hall & Martha his wife presented for fornicacion. The Court was informed they were gon to hauarell & Ordered a spetiall warr<sup>t</sup> to be Issued out for their appearance at the next Court.

## CHRISTOPHER &amp; MARTHA WHEATON Presented

Christopher Wheaton & Martha his wife presented for fornicacion. The Court beeing Inform<sup>d</sup> that the man was at sea respited his presentment till the next Court.

## MARY HUCHINS Sentenced

Mary Huchins complained of for disorderly cariages in her howse The Court Orders that she put in suerties for her good behauior.

## PAUL HALL Presented

Paul Hall presented for liueing from his wife who is in England, hee appeared in Court & declared that hee was inform<sup>d</sup> that his wife is dead the Court Ordered him to repaire to the Last place of her aboade or bring Certificate that she is dead & pay fees of Court

## JEFFERY RICHARDSON bound to good behauior

Jeffery Richardson bound ouer to this Court on suspicion of breaking open the warehouse of John Pincheon Ju<sup>r</sup> w<sup>ch</sup> not beeing prou<sup>d</sup> but only beeing a night walker the Court Sentenc<sup>d</sup> him to be bound to the good behauior & pay fees of Court & [10] accordingly the said Jeffery Richardson in tenn pounds of prinsipall & John Cowell & William Read in fiae pounds apiece as suerties acknowledged themselves bound to the tresurer of the County of Suffolke on condicion that the said Jeffery Richardson shall bee of good behauior & appeare at the next Court of this County.

W<sup>m</sup> READ bound to good behavior

William Read Jun<sup>r</sup> bound ouer to this Court for Suspicion of breaking open Jn<sup>o</sup> Pincheon Jun<sup>r</sup> his warehowse the Court not finding sufficient Euidence against him yet beeing Jellouse of him by reason of his night walking & seuerall other suspitiose carriages the Court sentanc<sup>d</sup> him to be bound to the good behauior & accordingly the said william Read in tenn pounds as prinsipall & William Read sen<sup>r</sup> in five pounds & John Cowell in five pounds acknowledged themselves joyntly & seuerally bound to the tresurer of the County of Suffolke on condicion that the abouesaid William Read shall be of good behauior & appeare at the next Court of this County.

HANNA STEWARDS Sent<sup>a</sup>

Hannah Steward convicted for stealing seuerall goods from M<sup>rs</sup> Sarah Pickering her Mistris she confest the fact The Court sentanc<sup>d</sup> her to pay threefold according to Law the goods to be return<sup>d</sup> & be part thereof, & pay fees of Court & prison standing comitted till the sentence be perform<sup>d</sup>.

## NESTFIELD whipt

Joseph Nestfeild marriner convicted for violently offering abuse to Abigaile Johnson in a Laciuiouse manner the Court findeing itt fully prou<sup>d</sup> sentanc<sup>d</sup> him to be whipt with thirty-nine stripes seuerely laid on payeing fees of Court & prison Standing comitted till the sentence be perform<sup>d</sup>.

## [PHILIP HARRIS]

Phillip Harris marriner convicted for stealing forty nine shillings & six pence from Mathew Gross out of his briches pocketts on board his Lighter for w<sup>ch</sup> he fled & by vertue of a hue & cry overtooke & return<sup>d</sup> the Court sentanc<sup>d</sup> him y<sup>e</sup> s<sup>d</sup> Renew (*sic*) to pay threefold according to Law, w<sup>th</sup> fees of Court & prizon standing comitted till the Sentence be perform<sup>d</sup>.

RENEW sent<sup>a</sup>

Peter Renew convicted for stealing money as by Euidence appears the Court sentanc<sup>d</sup> him to pay threefold according to Law & fees of Court & prizon standing comitted till the sentence be perform<sup>d</sup>.



Ord<sup>r</sup> about PHIL: EDWARDS Estate

Vpon the request of William Holliway Attorney to Abiah Edwards the right heir to y<sup>e</sup> Estate of Phillip Edwards late of Dorchester, deceased, the Court orders William Trescott (who Administred on aforesaid Estate) deliuer it up to the abouesaid Holloway, he the said Holloway giueing security to this Court for the vallue that it may be to the vse of the right heir aboues<sup>d</sup>.

## [MARY WILMORE]

Mary Wilmore was by Order of this Court discharg<sup>d</sup> from Prison [11]

## Order about CHANDLER

The Court orders that the Marshall instate Samuella Chandler (who married the late widdow Wormall) into the thirds of the Estate sued for according to the returne of the Comittee (that was appoynted to view the howses & ground) bearing date y<sup>e</sup> 4<sup>th</sup> of y<sup>e</sup> 12 m<sup>o</sup> 1670.

Ord<sup>r</sup> about a Comittee for M<sup>rs</sup> LORIN

Upon the Petition of M<sup>rs</sup> Lorin of Hull & her sonnns to this Court for the setling of the Estate of her late husband the Court desires & appoynts Jn<sup>o</sup> Leuerett esq<sup>r</sup> Dep<sup>t</sup> Gou<sup>r</sup> W<sup>m</sup> Stoughton esq<sup>r</sup> & Cap<sup>t</sup> W<sup>m</sup> Daus to be a comittee to repair thither & Examine all matters relating to the Diuicion of abouesaid estate & call all persons before them conserved & endeauor a settlement thereof making returne heereof to the next County Court & the Dep<sup>t</sup> Gou<sup>r</sup> to Appoynt tyme & place & the Clerke to furnishe them with all papers that are vpon Record relating to said Estate.

CASY discharg<sup>d</sup>

John Casy Taylor was by order of this Court discharg<sup>d</sup> from his Administracion on y<sup>e</sup> Estate of Doct<sup>r</sup> Ralph Howser late of Jamaica Deceased.

REASONS shoos return<sup>d</sup>

The Court Orders that Samuella Reason have his shoos return<sup>d</sup> that was taken from him by Obadiah Emins & y<sup>e</sup> rest of the sealers of Leather in Boston

## TUDER comitted

Upon complaint made against John Tudor of seuerall incoradging speeches he gaue to y<sup>e</sup> persons in Charlestowne Ferry boat by w<sup>ch</sup> he indeauored to forward y<sup>e</sup> Escape of one Wheeler who violently (with sword Drawne & pistoll cockt) ran from ye Constable the Court sentanc<sup>d</sup> him y<sup>e</sup> s<sup>d</sup> Tudor to be comitted to prizon till he finde bonds for his good behaiour.

HILL sentanc<sup>d</sup>

Thomas Hill convicted for abuseing Constable Brading who vpon notice of disorder at a publique howse repayred thither to the cognisance of itt who carrid s<sup>d</sup> hill before the Govern<sup>r</sup> where he also behaued himselfe rudely the Court Sentanc<sup>d</sup> him to be whipt with tenn stripes or pay fve pounds fine in Money to y<sup>e</sup> County paying fees of Court & prison standing comitted till the sent<sup>a</sup> be perform<sup>d</sup>.

PRATT, pardon<sup>d</sup> 40<sup>s</sup>

Vpon the humble Peticion of Tymothy Pratt the Court remitts him forty shillings of his late fine.

The Court Adjourn<sup>d</sup> till y<sup>e</sup> 9<sup>th</sup> of 9<sup>m</sup>

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The Court mett according to Adjournm<sup>t</sup> y<sup>e</sup> 9<sup>th</sup> of 9<sup>m</sup> 1671.

Present

RI: BELLINGHAM esq<sup>r</sup> Gou<sup>r</sup>  
JN<sup>o</sup> LEUERETT esq<sup>r</sup> Dep<sup>t</sup> Gou<sup>r</sup>

EDW: TYNG  
WM: STOUGHTON } esq<sup>rs</sup>

The Court sees meete to continue John Jacob of Hingham to keepe a howse of publique Entertaynem<sup>t</sup> vtill Aprill Court next he giueing security according to Law & not to entertayne y<sup>e</sup> young people of the Towne.

## Administracion to DEERINGS estate

Administracion to the Estate of Samuell Deering late of Brantry deceased is granted to Mary Deering his relict shee bringing in an Inventory of said Estate & giue Security to Administer according to Law.

Brantry constables sworne

Martin Sanders & Caleb Hubbard beeing chosen Constables for  
Brantry were sworne in Court

JN<sup>o</sup> WISWALL Jun<sup>r</sup> sent<sup>a</sup>

John Wiswall Jun<sup>r</sup> complained of for forwarding the Escape of  
Cap<sup>t</sup> wheeler he appeared in Court where shew<sup>d</sup> a contemptuouse  
cariage & ground of suspicion of y<sup>e</sup> fact aboues<sup>d</sup> the Court sentanc<sup>d</sup>  
him to be bound to good behauior Standing comitted [12] vntill  
the Sentance be perform<sup>d</sup> & accordingly the said John Wiswall Jun<sup>r</sup>  
in forty pounds as prinsipall & John Woodmancy & Nathaniell  
Dauenport as suerties in twenty pounds apeice acknowledged them-  
selues bound to the tresurer of the County of Suffolke on condicion  
that the said Wiswall shall bee of good behauior & appeare at the  
next Court of this County. .

HANNA HULL dismis<sup>d</sup> of Administracion

The Court Dismisseth the Widdow Hannah Hull from y<sup>e</sup> Ad-  
ministracion granted her upon the Estate of her Late Husband  
Thomas Hull of Boston Cooper she haueing compounded with the  
Creditors thereof

The Court Adjourned to the 23<sup>th</sup> Instant

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The Court met according to Adjournm<sup>t</sup> y<sup>e</sup> 23<sup>th</sup> of 9m<sup>o</sup> 1671.

Present

RI: BELLINGHAM esq<sup>r</sup> Gou<sup>r</sup>  
JN<sup>o</sup> LEUERETT esq<sup>r</sup> D<sup>p</sup> Gou<sup>r</sup>

MAJOR ELI: LUSHER	} Esq <sup>rs</sup>
EDWARD TYNG	
W <sup>m</sup> STOUGHTON	

Administracion to the estate of John Addams Late of London,  
deceased is granted to Aphra his relict she bringing in an Inventory  
of said estate & giues security to Administer according to Law.

A warr<sup>t</sup> for Cap<sup>t</sup> PRICE

The Court Orders that a warr<sup>t</sup> be Issued out by the Clerke of this  
Court to Cap<sup>t</sup> Walter Price of Salem to sumon him to the next Court

of this County to Answer the complaint of L<sup>t</sup> Richard Cooke according to Attachm<sup>t</sup>

[Copies of writ and return are in S. F. 1068.1. See case of Cooke v. Broughton, in session of 30 January 1671 /72, below, p. 65.]

#### WEBB sentanc<sup>d</sup>

Christopher Webb beeing convicted that he hath beene a disturber of the peace of the Church of Brantry seuerall years Last past & by his acting an abettor of the Inhabitants in Invading the rights & priuiledges of the Church contrary to Law the Court sentences him to pay fve pounds fine to the County & to stand henceforward disfranchised during the pleasure of this Court & to be bound to his good behauior in fiuety pounds himselfe & twenty fve pounds apeice two suerties & pay fees of Court standing comitted till the sentence be perform<sup>d</sup> & accordingly Christopher Web as prinsipall in fiuety pounds & William Needeham & Stephen Paine as suerties in twenty fve pounds apeice acknowledged themselues joyntly & seuerally bound to the Tresurer of the County of Suffolk on condicion that Christopher Webb shall bee of good behauior & appeare at the next Court of this County.

#### Mr FISKS ord<sup>r</sup> to preach at Brantry

The Court haueing taken into consideracion the many means y<sup>t</sup> haue beene vsed with the Church of Brantry & hitherto nothing done to efect as to the obtayning the Ordinances of Christ amongst them, The Court Orders & desiries Mr Moses Fiske to improue his Labours in preaching the word at Brantry vntill the Church there agree & obtayne suply for the worke of the Ministry or this Court take further Order.

#### NORDEN Licenc<sup>d</sup>

Vpon Certificate from the Selectmen of Boston Licence is granted to Samuell Norden to sell Beere & keepe a howse of publique enter-taynement till aprill Court next & said Samuell Norden in tenn pounds as prinsipall & Edmond Jaxson & William Smith as suerties in fve pounds apeice acknowledged themselues bound to the tresurer of the County of Suffolke on condicion that the said Samuell Norden shall observe the Law title Inkeepers with its Addicions. [13]



[The title "In-keepers," in fifteen articles with four additions, covers seven pages (79-85) in The General Laws and Liberties of 1672. One addition, in 1664, directed toward "the great increase of prophanness . . . especially of the younger sort" imposed a fine of 5*s* for "singing rudely or making a noise to the disturbance of the Family, or any other Guests in any place of Publick Entertainment." The latest addition, of 1670, required selectmen to warn innkeepers against entertaining noted drunkards and tipplers, under penalty of 20*s*.]

Ord<sup>r</sup> about FAULKNER & HUCHINS

The Court orders that if Daudid Faulkner & Mary Huchins come not to the Clerke of this Court (to giue in their bonds for the good behavior) when sent for that vpon such default they shall be sent to prizon.

WEBS fine respited

Vpon the humble mocion of Christoper Webb to this Court y<sup>e</sup> Court was pleased to respit his Fine till next Court.

Ord<sup>r</sup> about DEACONS estate in ARTHUR MASONS hands & y<sup>e</sup> Orphant

Vpon the humble petition of Hope Allen & John Saffin Attourneys to & for William Shute & Rachell his wife the Late relict of Joseph Deacons now resident in Jamaica relating to some Estate & an Orphant named Mary Burroughs that said Deacons left in y<sup>e</sup> hands & to the Care of Arthur Mason at his last departure from hence to Jamaica before he dyed, both parties beeing heard who left themselves to the Courts determinacion who heard the Ecception to abouesaid Masons acc<sup>t</sup> together with his reply, read & spoken to & haueing Examin<sup>d</sup> the will & the Orphant before y<sup>m</sup>

The Court appoynts Arthur Mason to be guardian to s<sup>d</sup> Orphant Mary Burroughs Daughter in Law to the abouesaid Joseph Deacons who left her in trust with him as aboue said vntill shee come to Age to choose for herselfe & that this Court take further Order, & for that there is an Estate of said Deacons in Arthur Masons hands, hee the said Mason is Ordered to giue security to this Court of six hundred pounds to bring up the Child & to pay the sume of three hundred pound in money to her at age or Day of Marriage which shall first happen according to will & in case she Dye before that tyme the said three hundred pounds are to be deliuered to Rachell the relict of said

Deacons or her Order & what now there is more of the Estate of said Deacons in the hands of said Mason then the three hundred pounds abouesaid hee is to deliuer it to William Shute that Married the relict of said Deacons or his order.

OXMAN acknowledgeth a Judgm<sup>t</sup> to C<sup>p</sup> CURWIN

William Oxman appeared before Richard Bellingham esq<sup>r</sup> Gou<sup>r</sup> & Edward Tyng esq<sup>r</sup> the 8<sup>th</sup> of January 1671 & acknowledged a Judgment against himselfe & Estate to Cap<sup>t</sup> George Curwin of Salem for fiuety two pounds eighteene shillings & one penny in good march-antable Dry Fish & refuge fish & oyle at price currant according to bill Dated the 1<sup>st</sup> of January 1671 this was thus acknowledged as abouesaid as Attests

Freegrace Bendall Cler.

Execucion Issued y<sup>e</sup> 2 of y<sup>e</sup> 1<sup>st</sup> m<sup>o</sup> 16  $\frac{7}{12}$

At the Session of y<sup>e</sup> County Court afores<sup>d</sup>

Vpon due proclamacion made the persons heereafter Named were free<sup>d</sup> from their bonds of good Behauior, viz<sup>t</sup> James Steward of Weymouth, Joshua Nash, John Vering, George Burrill, Widdow Alice Thomas, William Evans, Rebecca Thomas

The Returne of the Committee about setling John Kingsbury's Estate allowed by the Court is lodged in the file of October Actions in y<sup>e</sup> yeare 1671. [ 14 ]

At a County Court held at Boston the 30<sup>th</sup> of y<sup>e</sup> 11 m<sup>o</sup> 1671

Present

RI: BELLINGHAM esq <sup>r</sup> Gou <sup>r</sup>	MAJOR ELI: LUSHER	} Esq <sup>rs</sup>
JN <sup>o</sup> LEUERETT esq <sup>r</sup> Dep <sup>t</sup> Gou <sup>r</sup>	EDWARD TYNG	
	W <sup>m</sup> STOUGHTON	

Grand Jurie Return<sup>d</sup> & Sworne viz<sup>t</sup>

m <sup>r</sup> William English	William Gary	Joseph Bates
Hugh Drurie	Daniell Preston	Robert Randall
Ri: Holledge	Samuell Clap	Thomas Fuller
Agustin Lindon	Samuell Wadsworth	Thomas Batly
Joseph Stow	Gregory Belchior	Thomas Lorin
Samuell Rugles	Jeremy Beals	

Jurie of Tryalls Sworne

m <sup>r</sup> Richard Wharton	Joseph Holmes	John Pratt
Edward Shippen	John Blackman	Josiah Lorin
John Curtis	John Gill	Isaac Bullard
John Watson	John Mills	Tho: Medcalfe

[PECK v. BONNER]

Thomas Peck plaintiff against John Bonner Henry Lauton, & Ralph Flecher Defend<sup>ts</sup> in an Action of the case for not satisfieing the said Peck for the hire of an eight part of the Katch called the Recouery for the space of eight months & a halfe at thirty fue shillings per month in money as appears by Charter partie & other Due Damages according to Attachm<sup>t</sup> Dated the 17<sup>th</sup> Day of the Eleuenth Month 1671 . . . the Jurie . . . found for the plantiffe foureteene pounds seaunteene shillings six pence in Money the plantiffe giueing Security to repay & satisfie to the Defend<sup>t</sup> what shall appeare to be due vpon disburstments on the vessell according to charter partie & Costs of Court.

[Several hundred documents in the Suffolk Files (1221, 1341, and 162121) relating to this case, and the subsequent litigation between Lawton, Bonner, and Ashton, enable one to reconstruct the story of the ketch Recovery's voyage. John Bonner<sup>1</sup> was master and originally owner of

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<sup>1</sup> Father of the Captain John Bonner who made the first engraved map of Boston. 5 Mass. Hist. Soc. Coll., vi. 134, 318; vii. 370.

three quarter-parts of this little trader of 45 tons burthen. He sold one quarter-part of her to Henry Lawton, an Englishman, and one quarter-part to Ralph Fletcher in August, 1670 (bills of sale in S. F. 1221.36, 73). Thomas Peck, builder of the vessel and original owner of the fourth quarter, chartered, on August 3, 1670, one-half of his share to Henry Lawton, Ralph Fletcher, and Captain Bonner

. . . For a voyage with her to bee made from Boston aforesaid vnto Virginia or Mariland or Both of them and from thence vnto the Kingdome of Ireland and from thence to England and from thence to Boston againe as her Last port of Discharge for 6 monthes certaine and Nynne monthes vncertaine Beginning on the sd 23<sup>d</sup> Day of August, One Thousand Sixe hundred and Seaventy the sd Peck with Livetenant Richard Cooke themselves fraighting the said Peckes other Eighth parte thereof for the same voyage . . .

The charterers were to pay Peck 1*l* 15*s* per month charter money until she returned to Boston (Peck's protest, 12 July 1671, S. F. 1221.34).

The Recovery sailed for Virginia under the command of John Bonner, with Henry Lawton supercargo, laden with the following cargo (S. F. 1221.48):

Invoice of Goods Shipped on board the Ketch Recovery, M<sup>r</sup> Jn<sup>o</sup> Bonner Command<sup>r</sup>

83 gallons rumm at 2 <sup>s</sup> & 2 <sup>d</sup>	08:12:10
77 gall Rum & 74 at 2 <sup>s</sup> & 2 <sup>d</sup>	16:06:04
2 pipes Medera	28:00:00
6 quarter Caske at 2 <sup>s</sup> & 6 <sup>d</sup> per p <sup>s</sup>	00:15:00
1 hh <sup>d</sup> Sugar: 7 <sup>c</sup> 1:16, at 24 <sup>s</sup> 6 <sup>d</sup> C	09:01:00
2 tunn beare w <sup>th</sup> caske	14:00:00
10 barrells w <sup>th</sup> salt cont <sup>a</sup> 40: bushells 2 <sup>s</sup> bushell 6 barrells french cont <sup>a</sup>	
24 at 2 <sup>s</sup> 4 <sup>d</sup> 16: caske at 3 <sup>s</sup>	09:04:00
4 hh <sup>s</sup> Seugar cont <sup>t</sup> 37 <sup>c</sup> 2.0. at 24 <sup>s</sup> C: is	33:00:00
4 tun molasses at 11 <sup>l</sup> p <sup>r</sup> tun	44:00:00
7 barrells molasses & 7 caske	10:01:00
4 Caske Suckets cont <sup>a</sup> 3 <sup>c</sup> 3:4. at 32 <sup>s</sup>	06:01:04
10 Hammocks at 12 <sup>s</sup> & 2 fine ditto 20 <sup>s</sup>	08:00:00
7 <sup>c</sup> Fish at 12 <sup>s</sup> 11 10 jarrs of Oyle	06:12:06
5 quarter caske	00:12:06
29 gall: Brandy at 5 <sup>s</sup> per gall	07:05:00
1 barrell powder	05:00:00
	<hr/>
	206:10:06
1 p <sup>r</sup> Stilliards	001:07:00
a small P <sup>r</sup> Can hookes	000:01:00
	<hr/>
	207:18:06
	6:06
	<hr/>
	208:05:00



The Cargoe above expressed goeth consigned unto M<sup>r</sup> Henry Lawton to dispose of in Virginia or Maryland & soe for England or Ireland or both according to agreement & is for y<sup>e</sup> account & adventure of y<sup>e</sup> severall persons after named Viz. M<sup>r</sup> Ralph Fletcher for one quarter part. M<sup>r</sup> Henry Lawton for one quarter part. M<sup>r</sup> Jn<sup>o</sup> Bonner for one quarter part, & one eight more between the thre above s<sup>d</sup> Persons. One sixteenth for y<sup>e</sup> account of Thomas Peck one sixteenth for y<sup>e</sup> account of Richard Cooke

Boston Sep<sup>t</sup> 8<sup>th</sup> 1670.

Henry Lawton

Owned by the plaintiffe in Court y<sup>e</sup> 26<sup>th</sup> 6. 72 as attests

Isaac Addington Cler

Instead of leaving Virginia for Ireland, as the charter-party required, the Recovery made a voyage to Barbados and back to Virginia. In S. F. 1221.78 is her

Invoice of Goods Shiped Aboard the Ketch Recovery bound for Barbadoes on Acc<sup>t</sup> of Ralph Fletcher And Comp<sup>y</sup> And Consigned to s<sup>d</sup> M<sup>r</sup> Bonner viz

January 7: 1670	3 hh & A parcel of tobcco . . . . .	qt	1273
	25 bushells pease at 40 <sup>lb</sup> tobacco per bushell . . . .		1000
	2072 <sup>lb</sup> porcke Cost in tobacco . . . . .		3115
	7 barrels tarre Cost . . . . .		1480

£ 6868

Errors Excepted

per me. Hen. Lawton.

For aught shown by the record, the voyage was a harmonious one until the Recovery reached Liverpool, at the end of her second voyage from Virginia. There, apparently, the rascality began. According to super-cargo Lawton, Captain Bonner left the vessel "with none to take care of her" in order to make a visit to London; and after he had returned and the cargo was on board and the vessel sufficiently provisioned for an ocean voyage, he delayed sailing for three or four weeks under various pretenses. Five packs of goods, five hogsheads and five casks of cheese, "five creats of Pipes, & five or ten barrels" were taken aboard for the owners (deposition of mate Goodridge, S. F. 1221.88), but a part of the homeward cargo, received on board at Liverpool, November 24, 1671, was contracted for by Henry Ashton of Liverpool, merchant, who engaged for his own passage as well (Ashton's protest, S. F. 1221.33). It consisted of six tons of goods and twelve servants to be transported to Virginia.

The indenture of one of the servants, Robert Scofield follows (S. F. 1221.40):

This Indenture witnesseth that I Robert Scofeild doe freely binde myselfe & Couenant w<sup>th</sup> Henry Ashton of Liuerpoole in the County of Lancaster Merchant with him to goe hence to Virginia in America in good Shipp called the Recouery

of Boston there to dwell & serve him the Said Henry Ashton or his assignes mentioned on the backside of this present Indenture the full end & terme of fowre years from the Day of the Ariuall at the Said place to be fully compleat & ended during which terme the s<sup>d</sup> Henry Ashton or his Assignes is to finde his Said Seruant with meate drinke Lodging washing Apparrell meete & convenient & at the Expiracion thereof to haue two suits of Apparrell prouition for one yeare & fuety Acres of Land to be Established on him for an Euer Lasting Inheritance according to the Custome of the Country In Testemony whereof the parties abouesaid to these presents haue Interchangeably Set their hands & Seales this 22<sup>th</sup> Decemb<sup>r</sup> 1671

his  
Robert X Scofeild & a Seale  
mark

Signed Sealed & Deliuered in p<sup>r</sup>sence of  
Francis Siddell  
Hen: Lawton

After further delay at Liverpool, at which Ashton protested (S. F. 1221.91), Bonner made, on 19 December 1671, the first of several attempts to leave Lawton behind, apparently with the idea of making off with the cargo and selling it for his own behoof. John Ireland, one of the Recovery's seamen, deposed (S. F. 1221.85) that when the Recovery was sailing to and fro waiting for a fair tide to clear the flats

. . . in Liverpoole River, wee Saw two men on horse backe comeing along the Sands, and this Depon<sup>t</sup> thought it might be m<sup>r</sup> Henry Lawton, and Spake to the master that they might go fetch him on board, and the said John Bonner replied that if the said Lawghton would come on board he might hire a boate (there being none neere, for he would not send the boate for him, and said if he had Israel Milboroughs chest aboard he would go to Sea, & leave the said Henry Lawton behind, & neither stay for him nor the ship Dimond.

Whereas Severall times this depon<sup>t</sup> hath heard the said Bonner pretend before that, he durst not go out with out a Pilot, or some other ship or vessell in company, And further the said Bonner said to the Seamen, that if they would go to Sea, he would put m<sup>r</sup> Browne & his wife (that were passeng<sup>rs</sup>) on shoare and all said Lawtons Serv<sup>ts</sup>, that were then on board, but two of Said Laughtons Serv<sup>ts</sup> were gone or rune away before, after they had been Shipped on board at Liverpoole: And further this Depon<sup>t</sup> Saith, that the said Bonner did send the boate on Shoare for m<sup>r</sup> Ashton, and this Depon<sup>t</sup> being in the Boate, the said Bonner bid him if he could meet with m<sup>r</sup> Ashton bring him aboard, & leave the said Lawton behind, for the said Bonner said if the said Lawton was left behind, they should not pay for a boate that was lost in Liverpoole. . .

Ashton corroborated the main details of this story (S. F. 1221.9). Lawton obtained a small boat and managed to get on board the Recovery before she left port. On December 21, 1671 (S. F. 1221.91), she put in at Douglas in the Isle of Man, "whereat," according to Lawton (S. F. 1221.5), Captain Bonner

spent 9 weeks more as unnecessarily as the former, with nigh thirty people on board in w<sup>ch</sup> time he pretended to waite the motion of A Ship that lay in the

Harbor but when the s<sup>d</sup> Ship was ready to sayle & that pretence fayled, well knowing that the plaintiffe waited his motion he so far degenerated from his duty that he instigates the company to complaine to Authority for want of a Cable & pump & provisions, w<sup>ch</sup> was not there to be gotten upon any termes as he well knew in w<sup>ch</sup> time both himselfe & Company deserted y<sup>e</sup> Catch leaving the Haches open, the Ketch on ground, thereby exposing the Merchants Goods to be stolne & imbeasled as per Gooderidges Evidence n<sup>o</sup> 3. & others, the plaintiffe<sup>1</sup> having to the great detriment to the voyage supplied him with 5 barrells of biefie, 4 barrells of Herrings & one tunn of beare, the 3<sup>d</sup> or 4<sup>th</sup> day after his arrivall there as per Henry Ashtons Evidence N<sup>o</sup> 8. & having combined with the men, in the neglect of their duty, now pretends the men will not sayle except the plaintiffe give bonds to secure them from Dammage, vpon w<sup>ch</sup> the plaintiffe to save the voyage from vtter ruine, hired some fisher men to sayle the Ketch for some port in Ireland there being no seemen to be gott in the Ile of man, which the Defend<sup>t</sup> und<sup>r</sup> standing the next night being a dark night, with out the Plaintiffs privity, gott himselfe & company on board, & sett sayle with the Cetch, sending his boate on shoare for M<sup>r</sup> Henry Ashton, with expresse order to leave the plaintiffe behind, but the plaintiffe being informed of his departure, hired a boate and followed him, as appears per Jn<sup>o</sup> Irelands Evidence n<sup>o</sup> 4 that the Defend<sup>t</sup> might the better deceive the Owners of a boate, by himselfe & company carelessly lost in Liverpoole after all w<sup>ch</sup> s<sup>d</sup> Bonner still falsly pretending want of provision sayled for Dublin in Ireland, where the plaintiffe at s<sup>d</sup> Bonners Demand did again refurnish him with 15 barrells of biefie, 8 bushells pease 18<sup>11</sup>/<sub>4</sub> bread to the vallue of 30<sup>l</sup> money of England, as appears per account of victualling owned in Court & secretly after all this the Defendant draws a protest against the plaintiffe as supra cargo & then setts sayle with a contrary wind & leaves the plaintiffe behind in Dublin, not so much as leaving him any sustenance, thereby indeavouring to disparrage his credit & bring away not only his other Estate but chest & wearing apparrell & other necessaryes, intending his vtter ruine at once, & that he might leave nothing unattempted that might serve him in this unheard off iniquity, after he had sayled thence back to the Ile of man, from thence to fyall & there signed bills of loading for Virginia, but comes hither for Boston, breaks open the Plaintiffs Chest & Case, disposing of his writings, sundry of which were of concernment about some of the forementioned transactions, disposing of all according to his owne will & pleasure, improveing the plaintiffs Estate to purschase his peace with others more remotely concerned in this his unrighteous Actions,

Most of these details are corroborated by Ashton (S. F. 1221.91), to whom Bonner admitted that his intention was to leave Lawton behind, "saying the voyage would neuer doe well if he did not leaue him," which he did upon sailing from Dublin on March 14, 1672.

The Recovery finally "cast anchor at Boston" on May 25, 1672 (S. F. 1221.51) after an absence of over twenty months — the original agreement having been for a voyage of nine months at the outside. Upon arrival, Captain Bonner was confronted with the judgment of court against himself, Lawton, and Fletcher for 14<sup>l</sup> 17s 6d, as recorded in the

<sup>1</sup> Lawton, in the case to which this belongs.

text. This was only the beginning of a long course of litigation between Ashton, Lawton, and Bonner; for which see *Ashton v. Bonner* on p. 141 below, and subsequent entries.]

[WINTHROP v. ALCOCK'S executors]

Cap<sup>t</sup> Thomas Clarke Attourney of Jn<sup>o</sup> Wintrop esq<sup>r</sup> plaintiff against John Williams & Ann his wife George Alcock John Alcock Palsgrau Alcock Mary Alcock Elizabeth Alcock & Joannah Alcock Executors & Executrices to Doctor John Alcock deceased Defend<sup>ts</sup> in an Action of Debt of fiuty pounds for a hundred goats bought by the said Doct<sup>r</sup> John Alcock deceased about ten years since & all Due Damages according to Attachm<sup>t</sup> Dated the 24<sup>th</sup> of 11 m<sup>o</sup> 1671 . . . the Jurie . . . found for the Defend<sup>t</sup> Costs of Court which was seauen shillings & fowre pence.

[MEAD & INGRAM v. TURNER]

John Richards Attourney to Cap<sup>t</sup> William Mead & Ralfe Ingram of London plaintiffs against Ephraim Turner Defend<sup>t</sup> in an Action of the case for non payment of the sume of tenn pounds sixteene shillings in London beeing the ballance due to said Mead & Ingram from said Turner for a parcell of Linen bought by said Turner of them the said Mead & Ingram Anno 1664 or 1665 with Due Damages according to Attachm<sup>t</sup> Dat the 7<sup>th</sup> Day of 10 m<sup>o</sup> 1671 . . . the Jurie . . . found for the Defend<sup>t</sup> Costs of Court the plaintiff appealed from this Judgment to the next Court of Assistants & the said John Richards & Peter Lidgett in twenty pounds apeice acknowledged themselues bound to . . . prosecute his Appeale . . .

[A copy of the bill for the goods in question is in S. F. 1104.14, on the same sheet as the power of attorney from Mead and Ingram to Richards:

London 21<sup>th</sup> March 1664

Bought by Ephraim Turnor of New England Merchant of William Mead and Ralph Ingram of London the goods following made vp in one pack marked & Numbered & per margent & delivered to the Said Ephraim Turnor.

N <sup>o</sup> 1 It Broad w <sup>t</sup> Canvas q <sup>t</sup> 36 $\frac{1}{4}$ :18 $\frac{1}{2}$ :	is 54 $\frac{3}{4}$ ells at 18 <sup>d</sup> per ell .	li 4:02:01 $\frac{1}{2}$
2 It 19 ells holland, at 2 <sup>s</sup> 10 <sup>d</sup> per ell . . . . .		li 2:13:10
3 It 19 ells holland, at 4 <sup>s</sup> 4 <sup>d</sup> per ell . . . . .		li 4:02:04
4 It narrow blewes q <sup>t</sup> 32 $\frac{3}{4}$ : 33 $\frac{1}{2}$ : 34 $\frac{3}{4}$ :	is 101. yds, at 10 <sup>d</sup> per yd	li 4:04:02
It 5 ells of flaxen Cloth to wrape aboute y <sup>o</sup> truss at 10 <sup>d</sup> ell . .		li 0:04:02



It 4 ells Course Canvas to pack in at $8\frac{1}{2}^d$ per ell . . . . .	li 0:02:10
5 It 52 ells yd broad Dowlas at $2^s$ per ell . . . . .	li 5:04:00
It Shipping Charges & Primage . . . . .	li 0:02:07
	<hr/> 20:16:00 $\frac{1}{2}$

The 28<sup>th</sup> Decem<sup>r</sup> Ann<sup>o</sup> 1667 Rec<sup>ed</sup> in parte: li 10<sup>li</sup>

William Mead  
Ralph Ingram

. . . true Coppie as Attests FreeGrace Bendall Cler.

A copy of the Bill of Exchange (or, as Turner claimed, Obligatory Bill), is in S. F. 1104.8:

Boston in New England 16<sup>th</sup> November 1665

Thirty Dayes after sight of this my first Bill my Second & third of the Same tenor & Date not being paid I engage to pay or Cause to bee paid To Cap<sup>t</sup> William Mead or his order in London the full & Just Summe of Twenty pounds Sixteene shillings sterling: being for the like vallue here Recceed of Ephraim Turnor, for the punctuall performance hereof I bind my Selfe heirs & assignes as witness my hand

Rich<sup>d</sup> Thurston

Witness

Richd: Wayte

Ben: Phillips

This is a True Coppie as Attests FreeGrace Bendall Cler

The following correspondence is also on record (S. F. 1104.9-12):

London y<sup>e</sup> 26<sup>th</sup> Feb<sup>r</sup> 1665

M<sup>r</sup> Ephraim Turnor S<sup>r</sup>

Yours of the 20<sup>th</sup> November is Come to hand w<sup>th</sup> bill of Exchange w<sup>ch</sup> I shall shew soe Soone as M<sup>r</sup> Thurston Comes to towne but our Commodities are soe Ex-treemely risen & y<sup>e</sup> dangers of y<sup>e</sup> sea soe great that I have not adventured to send you any, fearing thereby to Incurr yo<sup>r</sup> hard thoughts of me if they should Come Safe to yo<sup>r</sup> hands w<sup>ch</sup> is very Doubtfull there being warrs proclaimed as well against y<sup>e</sup> french as y<sup>e</sup> Dutch: S<sup>r</sup> these are the need full from your Louing Friend

Will: Mead

In 1104.12 is the copy of a deposition made under oath by Eusebius Sheppherd before the Mayor and Aldermen in the Guildhall, London, to the effect that he witnessed "Henry Taylo of Boston in New England Chirurgeon" seal and deliver two bonds to Mead and Ingram, now shown in court and dated April 11, 1668; and that he saw "Thomas Norman Junior of Boston in New England Merchant" seal and deliver a bond to the same; and that Ephraim Turner bought a certain pack of merchandise from Mead and Ingram, on which 10*l* 16*s*  $\frac{1}{2}$ *d* were still due.

John Richards' reasons for appeal of the case from this court have not been preserved, but John Turner's answer is in S. F. 1104.5:

John Turner as Suerty for Ephraim Turner his Answer to y<sup>e</sup> reasons of Appeale p<sup>r</sup>sented by John Richards as Attorney to Cap<sup>t</sup> william meade and m<sup>r</sup> Ralph Ingram in y<sup>e</sup> caise depending betwixt s<sup>d</sup> John Richards Attorney &c and Ephraim Turner.

To y<sup>e</sup> first

The Defend<sup>t</sup> hath proued by Cap<sup>t</sup> meads owne letter bereing date 26 febr. 1665 y<sup>t</sup> y<sup>e</sup> Bill was a bill of exchange, & so owned by him. 2<sup>ly</sup> though not named in y<sup>e</sup> bill a bil of exchange yet it carrys y<sup>e</sup> forme of a bill of exchange w<sup>ch</sup> a man draws vpon him selfe; for it is as much as an accepted bil, drawn vpon another, 3<sup>ly</sup> his hairs &c he sath are bound. I answer when a man hath once accepted a bill of exchange his hairs are bound, Lex mec. 266.<sup>1</sup> 4<sup>ly</sup> all bills drawne vpon an other & p<sup>r</sup>sented by a publike notary when they are accepted he is a witnes to y<sup>e</sup> acceptance, if not accepted he protests them, w<sup>ch</sup> in this caise was not done as it shold haue bene, & y<sup>t</sup> w<sup>thin</sup> 3 dajs at furthest according to y<sup>e</sup> natuer of bills of exchange as apears in Lex Merc<sup>t</sup> in y<sup>e</sup> aduise about bills of exchange fo, 16, 24, but it is no losse to m<sup>r</sup> meade nor weakening to y<sup>e</sup> bills of exchange y<sup>t</sup> they were witnessed. 4<sup>ly</sup> y<sup>t</sup> al y<sup>e</sup> 3 bills ought to be deliuered to y<sup>e</sup> Cr. is a mistake & Contrary to y<sup>e</sup> law of merchants one should be kept by y<sup>e</sup> receiuer of y<sup>e</sup> bill of exch. to sho he hath discharged his trust. y<sup>r</sup>fore y<sup>e</sup> bills Legally proued to be by Exchange.

To y<sup>e</sup> 2<sup>d</sup>

Great neede of a protest if not paid because w<sup>th</sup>out it Turner was left w<sup>th</sup>out recouery & must recouer if euer by power from meade, w<sup>ch</sup> now he is for euer made vncapable of, if y<sup>e</sup> drawer were neuer so able, for want of a protest in time, 2<sup>ly</sup> for y<sup>e</sup> man going out of y<sup>e</sup> Country w<sup>th</sup> y<sup>e</sup> bill he drew vpon him selfe, it stooode Cap<sup>t</sup> meade more in hand to prosecute him by protest, and also attaihm<sup>t</sup> for he might haue donne it by attaiching y<sup>e</sup> money in his owne hands. for Turner knew Cap<sup>t</sup> meade had sufficient in his owne hands of Thirstons to pay him selfe w<sup>th</sup>, w<sup>ch</sup> was y<sup>e</sup> ocation of Turner receiueing Thirstons bill, & m<sup>r</sup> Richards could not denie in Court but he sent goods by Thirston y<sup>t</sup> voyage, w<sup>ch</sup> might be sufficient to pay this bil, y<sup>t</sup> was consignd to Cap<sup>t</sup> Meade, and though Turner promis by letter paym<sup>t</sup> of this 10<sup>l</sup> on Condition, yet it wil not bear y<sup>t</sup> inferans m<sup>r</sup> Richards maks but y<sup>e</sup> Contrary. for if Turner might haue had such a parcel of goods sent him then, w<sup>ch</sup> he might haue gained much more by, then he would pay him else not. for Turner knew wel y<sup>t</sup> Cap<sup>t</sup> meade had made Thirston his debtor & not Turner by receiueing part of y<sup>e</sup> bill to witt ten pounds as by leter 2 Ap. 1668, & yet had not protested his bill in time nor indeede not at al, so y<sup>t</sup> it neuer was recouerable by Turner as apears by Lex Mer<sup>ct</sup> fol. 264. and also as before fo, 16. 24. it is conuenient a protest be drawne w<sup>th</sup>in 24 howers but must not exceed 3 dajs. y<sup>r</sup>fore now Turner is not capable to be put in power to receiue it though y<sup>e</sup> drawer were here p<sup>r</sup>sent & neuer so able; for want of a protest according to Law.

<sup>1</sup> The frequent mention in this case of Lex Mercatoria refers to a well-known English legal treatise, *Consuetudo vel Lex Mercatoria*, or *The Ancient Law-Merchant*, by Gerard Malynes. First published in 1622, this book went through several editions during the seventeenth century. A comparison of Turner's references in the text shows that he used the latest edition, that of 1656. A popular legal tract, *Advice Concerning Bills of Exchange* by John Marius, was bound in with this edition. Several of Turner's references in the text are to the *Advice of Marius*, and not to the treatise of Malynes.

To y<sup>e</sup> 3<sup>d</sup>

for y<sup>t</sup> y<sup>e</sup> p<sup>l</sup> saith y<sup>t</sup> y<sup>e</sup> def<sup>d</sup> alledgeth y<sup>r</sup> is one of y<sup>e</sup> bills yet in y<sup>e</sup> hand of Meade & y<sup>t</sup> it is but A bare affirmation w<sup>th</sup> out profe, I would know whether y<sup>e</sup> p<sup>l</sup> use to take witnes what bills of exchange he incloses in his letters, but we know y<sup>t</sup> y<sup>e</sup> end of 3 bills of exchange is that too may be sent away and one kept, & y<sup>f</sup>ore it is vncharitable to say he beleues Turner kept 2 of them, for y<sup>e</sup> gentlemens repute we blemish them not.

To y<sup>e</sup> 4<sup>th</sup>

Sending a bill of exchange drawne upon a mans selfe and y<sup>e</sup> party y<sup>t</sup> it is sent vnto owes y<sup>e</sup> drawer a greater some for fright, I thinke it is not onely a fine way of returnes, but y<sup>e</sup> finest way I can devise.

To y<sup>e</sup> last

That there once was such a debt & y<sup>t</sup> y<sup>e</sup> debt is not onely legally but honestly paid I hope hath bene proued, and if it be lost it is not Turners but meads neglect and losse, and y<sup>e</sup> Court gaue iudgm<sup>t</sup> according to Law & witnes, in this caise w<sup>ch</sup> I doubt but this hon<sup>rd</sup> Court wil confirme

5. 1<sup>mo</sup> 1671/2

John Turnor

The Court of Assistants, on March 5, 1671/72, reversed the former judgment and awarded 10/ 16s and costs to Meade and Ingram (Records of the Court of Assistants, iii. 212). Turner then pled for a review of the case (S. F. 1104.6):

Ephraim Turnor his pleas for Reueiew of a Case tryed att the Court off asistants in march Last wherein m<sup>r</sup> John Richards attorny to Cap<sup>t</sup> Wm Mead & m<sup>r</sup> Ralph Ingorm of London was plaintiff and I the said Ephraim Turnor Defendant:

1<sup>st</sup> If I was Cast by mr Richards his plea that the Bill was not a Bill of Exchang but an obligatory bill therein he ownes It to be a Bill & Lex mercatoria In Aduice Concerning Bills of Exchang proous it to be a bill of Exchg: title whatt Exchange Is folio 1: where he saith Reall Exchange is nothing els but to giue or take vp mony in one Citty or town to the End to haue againe or Restore the Just vallue thereof in another town according to the price shall be agreed vppon Betwene the taker and deliuerer to allow or pay for the Exchange of mony and the Loss of time which will be from the time the mony Is taceen up or deliuered vntill it be Restored:

2<sup>ly</sup> that I paid mony heer testefieth Daniell Turrell Senior that mr Thurston was to pay It In England testefieth his Bill which makes it by the Law aboue Recitted a Bill of exchange wherein he is obliged to pay by agrement the same vallue possitiuely in England that he took vp of mee heer

3<sup>ly</sup> For Daniell Turrells Euidence It is New Euidence neuer in Court Before: to Answer a plea of mr Richards to mee that though Cap<sup>t</sup> mead was to pay Thurston freight yet that was vppon the Shippes acc<sup>ott</sup> But that this was a partiquler debt thurston owed mee I Answer by that Euidence as written: It was vppon the Shippes acc<sup>ott</sup> and were It Alowable for me to Sware in this Case I Could Safely that the Shipp Could not haue gone away If I or Sum other had not paid that mony and aboue as much more which I did pay

4<sup>ly</sup> If still the Bill be denied to be a bill of Exchange the word Exchange not mentioned I Answer as aboue in Lex mercatoria folio 1 whatt Exchange is

5<sup>ly</sup> If said it is noe bill of Exchange Beccaus heirs and assignes bound in it to that I say matter & forme makes euey thing in Ciuills or other wais In this heer is matter its mony paid heer (for mony to be paid In England as in Lex mercatorea folio 1 title bills of exchange) as by the testimony of daniell Turrell for soe much paid him heer for the Shippes acco<sup>tt</sup> by Thurstons order and by Thurstons Bill for the Like vallue to be paid in England for Soe much Receaued of me heer: which prooues it I hope a bill of Exchange

6<sup>ly</sup> If it be said bills of Exchg are the greatest things Bindeing and Nothing Can be more strong: yet Adding heirs and assignes takes not from Butt adds to If Any thing be so be Added and alters not the power of a bill of Exchange especially a person drawing vppon him selfe: and for forme it is drawn att or after soe many dais sight of this my first Bill my Second and third of Same Tenor<sup>1</sup> and date not paid: or of this my Second my first and third or of this my third now in Court my first and Second of the same Tenor and date not paid soe that heer is the forme as in the Bill and the matter mony paid heer for mony to be paid In England which makes it Exchange as Lex mercatorea folio 1 title aduice It being soe it is accepted by the drawer as by Capt Meads Letter in Court 26 of 12<sup>mo</sup>: 65: wherein he owes it to be a Bill of Exchange and Richard Thurston being drawer and acceptor is bound to Capt mead and not my selfe as saith Lex mercatorea folio 13 Title Aduice: A Bill of Exchange which Is accepted and att the time not punc[k]tually paid: sum think If they Caus a protest to be made on such a Bill for non payment that by protesting the party accepting is freed and that they Reserue theire Right onely against the drawer (heer drawer and acceptor are one person) but the party accepting is soe far from Being freed by protesting as that he is more Liable which Is Richard Thurston not Ephraim Turnor

7<sup>ly</sup> Besides this bill was accepted and the acceptor therefore Ingaged as in folio 16 Title 24 houers for acceptance: and if it was verball acceptance (onely) which this Can not but bee as appears by Capt meads Letter yet that Bindeing title verball acceptance folio 17<sup>2</sup>

9<sup>ly</sup> It Being drawn by the acceptor vppon him selfe and protest not made for non paiement of the whole or for part as Lex mercatoria folio 17 title accept for part Saith it ought to bee: you must take such his acceptance for part but Caus the Bill to be protested and send the protest away to the party that sent you the Bill: But Capt mead neuer sent mee nor I neuer saw the bills sent nor heard of It being Come to New England vntill 1671 which was many years after it was drawn (and accepted by the drawer as per Capt meads Letters in Court) who ought presently to haue protested the bill as Lex mercatorea folio 22: you must presently protest for non paiement of the Remaining Sum and the Receauing part of the mony vppon the Bill doeth not weaken the bill or protest for not payment or any Legall Coures against the drawer or acceptor (Both which Is Richard Thurston .∴ Not Ephraim Turner) but Rather strengthens the same. and the protest is to be made in three dais after the mony due that was soe many days

<sup>1</sup> This refers to the common practice of giving bills of exchange in sets of three, only one of which was to be paid; this was to allow for possible losses of one or two bills in transmission.

<sup>2</sup> This would have been true of a regular bill of exchange payable at a specified date, but the law required a bill payable "after sight" to be accepted in writing because only thus would the date for payment be made definite on the instrument.



after sight of the bill .∴ which was shown to Richard Thurston by Cap<sup>t</sup> mead or his order as per his Letter and yet not protested nor Retturned Back to mee as he ought to haue done which If he had done with an assignnment on the back side to mee for what Left vnpaid I could haue heer Recouered as John Turnor and Elizabeth Alden Can testefie .∴ thurston whoos wife went away about two year after him and Left heer more then Enuf to pay that which was after wards sent to her Besides aboue thirtene pound I paid for her to m<sup>r</sup> Simon Lynde and good wife Farnum who Can testefie the same soe that if the bill had Bene protested And againe Assignned to mee It being made positiuely to Cap<sup>t</sup> Mead I Could then haue Recouered it of his Estate and If I had not then might I haue Bene Blamed as Justly as Cap<sup>t</sup> Mead now Suffers

10<sup>ly</sup> further the acceptor of this bill which is Richard Thurston is Bound to the party to whom payable Saith Lex mercatorea, folio 27

These things Considered I hope the Honored Court and Jury will finde not with standing all pleas of the Now deffendant and the word Exchange in the Bill omitted that it is a Reall Bill of Exchange Comeparing my first and second pleas together .∴ And noe protest being made in time according to that Law Lex Mercatorea folio 24 nor for non payment of part as folio 22 (which I desire may be perused by Court and Jury and Seriously Considered off) nor Retturned with Assignnment in time: for the Reasons mentioned that Richard Thurston Is the proper Debtor to Capt mead and not the Now plaintiff .∴

And if he the proper Debtor then my Letter Noe owning of the debt as due from mee .∴ for that Is But Conditionall noe more then If Ephraim shoold say to William he will pay him soe much mony for Richard If John will Lett him haue such or such a percell of goods such or such a peice of Land which Condition If performed By William then Ephraim Is obliged But this Condition was Neuer performed By William Mead therefore Ephraim Turnor not obliged the promis Being onely made vpon Conditions and as an Incouragement to him to send mee ouer the said goods then writt for which If att that time I had Recceaued shoold haue gained by them more then that ten pound

More ouer I sent two Bills home to England and Neither as yet I know off Retturned and though one be w<sup>ch</sup> m<sup>r</sup> Richards vnwillingly product .∴ yet the other may be deliuered vp to the drawer and acceptor viz: Richard Thurston vpon the Reseipt of the mony and If I forst to pay It againe then Cap<sup>t</sup> Mead doubly paid which I doubt not would bee

The legal problems raised by this case are complicated by the unusual form of the instrument involved. It appears from the facts that Turner in New England, being indebted to Mead in London for goods as itemized, sent him an instrument for the amount due, payable to Mead's order and signed by Thurston, a sort of agent of Turner's who had received from him money or some other equivalent. Thurston was probably in Boston when the instrument was signed in November, but evidently it was expected that Thurston would be in London the following spring and pay the amount due.

The normal course of business would have been for Turner to sign a bill of exchange ordering his agent Thurston to pay the amount of the debt

to his creditor Mead. If such a regular bill of exchange had been drawn, payable thirty days after sight, then the law of merchants (which Turner's answer has in mind) required the holder to present the bill as soon as practicable to the drawee (Thurston) for acceptance, viz., his promise to pay the bill, which he ought to write across its face. This presentation for acceptance would constitute "sight," and the bill would then become due for payment thirty-three days later, three days of grace being added to the thirty days specified in the bill. When the day of payment arrived the holder must again present the bill to the drawee (Thurston) for payment. After either acceptance or payment was refused, then the holder had to give notice of the dishonor within a reasonable time to the drawer (signer) of the bill. Failure to make these two presentments to the drawee (Thurston) or to notify the drawer (Turner, it is assumed) of any dishonor would release the drawer from further liability on the bill or the original debt.

But the instrument did not take the regular form of a bill of exchange discussed in the preceding paragraph. Although it describes itself as a bill, it seems to be really a promissory note, for it contains no order addressed to any third person as drawee, but only the promise of the signer to pay the specified amount to Mead or his order. Instead of drawing his own bill of exchange upon Thurston, Turner really gave a note signed by Thurston. In the first paragraph of his answer Turner interprets this instrument as a bill drawn by Thurston upon himself, but this construction would make no difference even if it accorded with the facts, because the English courts have treated such an instrument as a note. Promissory notes were in actual use in England in 1665, but there was considerable doubt whether they were negotiable instruments like bills of exchange, and the point was not finally settled until they were declared negotiable by Act of Parliament in 1704. This uncertainty may explain Turner's attempt to treat this instrument as if it were a bill of exchange.

The law of merchants did not require a note to be presented to the maker in order to make him liable. Consequently, Mead's inactivity did not release Thurston. Turner was in a somewhat different position. He could not, as he tried to do, claim the benefit of a discharge under the law of merchants, since he was in no way a party to the instrument. His whole claim that he was entitled to the formalities of presentment and notice of dishonor, as if he had been the drawer of a regular bill of exchange, was unfounded. At the same time Turner may have had a real grievance. If he is to be believed, he supposed that he had paid his debt by this note and was kept ignorant for some years that Thurston had not taken care of it. He says that if he had known of the dishonor he

could have reimbursed himself out of property belonging to Thurston, which remained in New England for more than two years after the note was given but was no longer available at the time of the suit. Probably this story of hardship impressed the jury sufficiently to get a verdict for Turner. However, it is uncertain whether there was a legal defense on the facts. Possibly the Court of Assistants thought that Turner should have communicated with Thurston in order to find out whether the instrument had been paid and not relied on the absence of information.]

## HUDSON v. MARSHALL

Cap<sup>t</sup> William Hudson plaintiff against Robert Marshall Defend<sup>t</sup> in an Action of the case vpon accoumpt to the vallue of twenty pounds fowreteene shillings or thereabouts & due Damages according to Attachm<sup>t</sup> Dated the 6<sup>th</sup> of y<sup>e</sup> 10<sup>m</sup> 1671 . . . the Jurie . . . found for the plaintiff nine pounds & eight pence with Costs of Court w<sup>ch</sup> was nineteene shillings & eight pence. [15]

## MARSH v. MACHEE

John Marsh plaintiff against John Machee & Sarah his wife Defend<sup>ts</sup> in an Action of Slander for reporting that the said Marsh would haue bin nought with her the said Sarah & other bad speeches & other Due Damages according to Attachm<sup>t</sup> Dated the 22<sup>th</sup> Day of november 1671 . . . the Jurie . . . found for the plaintiff three pounds Damages & costs or that Sarah the wife of John Machee make an acknowledgm<sup>t</sup> in open Court to the Satisfacion of said Court & Costs of Court thirty shillings & two pence.

## LIDGETT v. COLLINS

Peter Lidgett (attourney to Richard Sprague master of the shipp Arabella in the behalfe of m<sup>r</sup> Thomas Knights owner of the s<sup>d</sup> shipp) plaintiff against Robert Collins Defend<sup>t</sup> in an Action of the case for not payment of his passage from London to New Engl<sup>d</sup> in said Shipp & other money disburst for him there to the vallue of about thirteene pounds heere or that he serue said Knights or his Order the terme of foure years here according as himselfe declared when came on bord said shipp with other due damages according to Attachm<sup>t</sup> Dated the 13<sup>th</sup> of January 1671 . . . the jurie brought in . . . a spetiall verdict, That if a person inticed or perswaded aboard

a ship by a kidnapper & there to declare his willingnesse to be transported as a servant & such person afterward but before the shipp sayle or leaue the land shall desire Dismicion & manifest his vnwillingnesse to proceede or be transported & shall notwithstanding be brought away & transported be by Law Liable to pay passage & necessary supplies then wee finde for the plantiffe nine pounds fiue shillings in money with Costs of Court otherwise wee finde for the Defend<sup>t</sup> costs of Court, The Magistrates on perusall of this verdict declar<sup>d</sup> for the Defend<sup>t</sup> Costs of Court the plaintiff appealed from this Judgm<sup>t</sup> to the next Court of Assistants & the said Peter Lidgett & John Richards in twenty pounds apeice acknowledged themselues bound to . . . prosecute . . .

[ See Sprague v. Collins, above, p. 18. There is no record of an appeal to the Court of Assistants.]

#### WILLIAMS v. ALCOCK

John Williams (who married the Eldest Daughter of M<sup>r</sup> John Alcock deceased & one of the Executrixes of his Last will & testament) plaintiff against the Goods debts or Estate that was the Estate of M<sup>r</sup> John Alcock Late of Roxbury phisitian deceased now in the hands of M<sup>r</sup> John Greene as Agent or Attourney to M<sup>r</sup> John Hull & the rest of the Guardians of the Childrens Estate of the s<sup>d</sup> Alcock Defend<sup>t</sup> In an Action of the case for refusing to deliuer to the said Williams his part of that Estate or for not diuiding the same soe that he might haue his just & full part of the same due to him by the last will & testament of the said Alcock appeareth which Legacy or Estate hath beene Due Long since shee beeing of Age but detayned to the great wrong and Damage of the plaintiff & other due damages according to Attachm<sup>t</sup> Dated the 22<sup>th</sup> of y<sup>e</sup> 11 m<sup>o</sup> 1671 . . . [16] the Jurie . . . found for the Defend<sup>t</sup> Costs of Court.

#### CUTLER v. HERSHEY

Samuell Cutler plaintiff against William Hearsy of Hingham Defend<sup>t</sup> in an Action of the case to the vallue of seaventy pound for wrong don to him in withholding & refusing to giue possession of a howse lott lieing in Hingham contayning fiue acres of land formerly the land of John Cutler Deceased Due to the said Samuell Cutler by Inheritance & Due Damages according to Attachm<sup>t</sup> Dated the 20<sup>th</sup> of January



1671 . . . the Jurie . . . found for the plaintiff seauenty pound Damage or the present possession of two thirds of fiue acres of land sued for & after the Decease of widdow Huett the pl<sup>t</sup> mother the possession of the whole fiue acres with Costs of Court thirty nine shillings & six pence. The Court accepted this verdict but vnderstanding by the Townesmen of Hingham y<sup>t</sup> she viz<sup>t</sup> y<sup>e</sup> aboues<sup>d</sup> widdow is an Antient & necessituose woman the Court hath ordered that shee shall if Necessity requires haue the disposall of the third part of the said Estate to sell for her supply & vnto this Order the said Cutler in Court gaue his consent.

#### GIBBS v. JOY

Robert Gibbs plaintiff against Thomas Joy Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the thirtieth of December 1671. y<sup>e</sup> pl<sup>t</sup> withdrew his Acion.

#### WOODMANCY v. JOY

John Woodmancy pl<sup>t</sup> against Thomas Joy Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 28<sup>th</sup> of the 10<sup>th</sup> m<sup>o</sup> 1671, after the Attachm<sup>t</sup> was Read y<sup>e</sup> pl<sup>t</sup> not prouing y<sup>t</sup> legall sumons had bin giuen to the Defend<sup>t</sup> he y<sup>e</sup> said plaintiff was declared nonsuited.

#### THAIR v. ROSE

Richard Thaire pl<sup>t</sup> against Rodger Rose Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 8<sup>th</sup> of y<sup>e</sup> 11 m<sup>o</sup> 1671 the pl<sup>t</sup> not appearing was declared nonsuited.

#### LILLY v. STANES

Edward Lilly pl<sup>t</sup> against Richard Stanes Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 17<sup>th</sup> of 11 m<sup>o</sup> 1671 the pl<sup>t</sup> withdrew his action.

#### MOSELY v. DEACONS

Samuell Mosely pl<sup>t</sup>: against John Pease & Arthur Mason Executors to the Last will & testament of Joseph Deacons Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the        of        m<sup>o</sup> 1671 the pl<sup>t</sup> not appearing was nonsuited.

#### BRACKETT & BRATTLE v. Cap<sup>t</sup> CLARKE

Peter Brackett & Thomas Brattle guardians to John Hands Executor to his Father Marke Hands late of Boston Deceased plaintiffs against Cap<sup>t</sup> Thomas Clarke Defend<sup>t</sup> in an Action of the case for

withholding sundry goods receiued from M<sup>r</sup> John Doggett of London for the Acc<sup>ts</sup> of the aforesaid Mark Hands beeing the proceede of fīue butts of sugar shipped from Barbados by Daniell Burr vpon the propper accountp of the said Marke Hands & consigned to the said Doggett for sales & due Damages according to Attachm<sup>t</sup> Dated the 25<sup>th</sup> of January 1671 . . . [17] the Jurie . . . found for the pl<sup>t</sup> viz<sup>t</sup> that y<sup>e</sup> Defend<sup>t</sup> produce & shew to the plaintiff within two months all Aduices accountps Invoyses and Bills of Loading which M<sup>r</sup> Doggett hath at any tyme since the yeare 1660 sent to the said Cap<sup>t</sup> Clarke hauing referrence to fīue butts of Sugar shipped from Barbados to the said Doggett per order of Mark Hands & in case that any such papers cannot be produced that the Defend<sup>t</sup> doe vpon Oath according to the best of his remembrance & knowledge communicate the contents & purport of such papers as shall soe be wanting & that the Defend<sup>t</sup> pay according to what shall then appeare to haue beene the said Mark Hands his Interest either in ye halfe or whole of the proceeds of such sugar the first Cost of goods came to his hands with the Aduance of fowre pence vpon Euery shilling & the Interest of Eight per Cent to this tyme in money or that the Defend<sup>t</sup> vpon default therein pay to the pl<sup>ts</sup> one hundred & forty pounds in Money with Costs of Court the Defend<sup>t</sup> appealed from this Judgm<sup>t</sup> to the next Court of Assistants & y<sup>e</sup> s<sup>d</sup> Cap<sup>t</sup> Thomas Clarke & Ensigne John Richards Joyntly & Seuerally acknowledged themselves bound to . . . prosecute his appeale . . .

[The following documents, from S. F. 1090, explain the Barbadian transactions which were involved in this case, and throw light on the close commercial and personal relations between Boston and Barbados, Virginia, and "Manadoes" (New York). John Stoughton is perhaps the younger brother of William Stoughton, mentioned in the will of their father, Israel Stoughton, 1644, and according to Savage "never heard of after."

S. F. 1090.4

Barbados June 24<sup>th</sup> 1661

S<sup>r</sup>

I Received yo<sup>rs</sup> per m<sup>r</sup> Colby w<sup>ch</sup> were very Sharpe, I hope I shall endeavor to give no occasion of any more of y<sup>e</sup> Like, also I receiv[ed] yo<sup>rs</sup> per Joseph Grafton w<sup>th</sup> y<sup>e</sup> order & Statues but y<sup>e</sup> bill of Loading gives m<sup>r</sup> Eggington  $\frac{3}{8}$  of all & your Letter mentions  $\frac{3}{4}$  one for y<sup>e</sup> Acc<sup>t</sup> of yo<sup>r</sup> Selfe & marke Hands y<sup>e</sup>  $\frac{1}{4}$  on yo<sup>r</sup> owne Acc<sup>t</sup>. I, sell for 1<sup>11</sup>  $\frac{1}{4}$  per foot I shall returne y<sup>e</sup> effects per m<sup>r</sup> Joseph more w<sup>ch</sup> will goe home as Soone as M<sup>r</sup> Hilton, the Ketch providence hath a voyage for Serrenam w<sup>ch</sup> I hope will turne to Acc<sup>t</sup>, please God y<sup>t</sup> wee have had 13, or 14

ships Cast on shoare, I had 19 butts of Sug<sup>r</sup> one board Bugbe & pleased God he ridd out well, it was one yo<sup>r</sup> Acc<sup>t</sup> of Trottes Debt; I shall send all y<sup>t</sup> Debt home this year besides a considerable Summe on y<sup>e</sup> other Account, I have been 3 days on the Jury last week & now must attend y<sup>e</sup> whole Court two days w<sup>ch</sup> causes mee, To be breife per Joseph More I shall Enlarge w<sup>ch</sup> I Supposee will be home as soone as M<sup>r</sup> Hilton, not else but Remayne yo<sup>r</sup> faithful Servant.

John Stoughton

The following unflattering inventory is in S. F. 1090.2.

An Inventory of all such Goods M<sup>r</sup> John Stoughton died possest of, or had, or had at y<sup>e</sup> time of his Decease In his Charge & Cust[ody]

1 Stone horse, 1 Gelding Lame & Sickly

one man Negro named John & one Negro boy named Peter

One beam Scales & 882<sup>ll</sup> of Leaden waights

Three bb<sup>a</sup> flower, 2 firkins of butter, bad

1 Iron pott, 1 pewter bason; 6 butts w<sup>th</sup> Sug<sup>r</sup> almost full y<sup>e</sup> Contents not knowne.

1 hh<sup>d</sup> & 1: bar<sup>ll</sup> of Rum & 1 hh w<sup>th</sup> a Small quantity in it.

5 bb<sup>a</sup> of Stinking beife, 1 empty butt: 1 empty hhd, a parcell of Deals Contents not knowne,

a dozen of new hamocks, 3 old ones

a Small parcell of Cotten about 200<sup>lb</sup>

a Case of Pistolls & holsters a pockett pistoll & rapier a Sett of bandaleirs

3 pair of breches one Dublett & Loose Coat, 2 old hatts, 1 pair of Silver buttons

for breches one Sett of Silver Ditto for Neck & Coller

a sett of Silver shoo buckles a Silver ginie hatt band, a Small gold Ring, a Small hoope gold ring, a Silver Seale, a pair of Silk Stockins

6 shirts, 5 Striped Neccloths, 4 white Jackitts, 9 Napkins 2 table Cloths,

3 pair of Linen Drawers, 1 pair old Riding stockins, 1 p<sup>r</sup> old Silk Stockins

a holland neckcloth, 2 handchercheifs, 3 bands,

a purple Cotton morning gowne one Rugg,

1 English Case w<sup>th</sup> 9 bottles, 9 books written in Concerning Acco<sup>ts</sup>

Severall piles of writings, Seaverall Small papers Loose, Seaverall Noats & ribles in Small boxes & bundells a Looking glasse, a Ceder Deske a[bout] a Reame of paper.

This Came enclosed in a letter from Daniell Bur Dated y<sup>e</sup> 22<sup>th</sup> January 1661 In w<sup>ch</sup> he writes I have sent also an Inventory taken per me Richards & me Cook of y<sup>e</sup> Goods m<sup>r</sup> Stoughton died possessed of & had in his Custody &c<sup>a</sup>

The following account (S. F. 1090.6) is reckoned in pounds of sugar:

1661 Barbados; Marke Hands is  
Debter unto Severall Debts paid for  
Acco<sup>t</sup> of John Stoughton

	<i>Sugar</i>
Edw: Cole . . . . .	0320
To Essabell Walker . . . . .	0100
To Joseph Seaton . . . . .	0462
To Ditto Obadiah Rume . . . . .	0434
To Edw Hussey . . . . .	0096

1661 Per Cont: Credito<sup>r</sup>

	<i>Sugar</i>
By Sugar Reced from Tho: Rowse . . . . .	05377
By 5 butts Sug <sup>r</sup> Left in y <sup>e</sup> house & one butt w <sup>th</sup> a Small quan- tity in it w <sup>th</sup> the Butts . . . .	07649

	<i>Sugar</i>		<i>Sugar</i>
To Leanard Sathem . . . . .	0010	By Sug <sup>r</sup> from Joseph Seaton & Thomas Dymon . . . . .	00581
To Sam: Hanson . . . . .	0543	By Ditto from mansel Brando	03000
To m <sup>r</sup> Buckley . . . . .	0200	By Ditto received from Tho: Culpeper . . . . .	01084
To John Rithop . . . . .	0282	Reced from Robert Crober . .	00140
To James Haydon junio <sup>r</sup> . .	2475	By reced from Abram Kemball	00257
To Will: Rush . . . . .	0052	By Tho: Powdreth . . . . .	00115
To David Morgan . . . . .	0324	By Abram Kemball . . . . .	00622
To M <sup>r</sup> Chandler . . . . .	0622	By m <sup>r</sup> Dalathy . . . . .	450
To James Cawes . . . . .	0622	By Sion Hill . . . . .	00322
To Jeremiah Eggington . . .	2668	By Cap <sup>t</sup> James White . . . .	06060
To Will Rope . . . . .	0095	By John Sewell . . . . .	02600
To Nathaniell Patridge . . .	0872	By Tho: Culpeper . . . . .	00054
Thomas White . . . . .	0500	By Tho: Abbett . . . . .	00159
To So much paid for a Letter of administraton . . . . .	0120	By 3 gall <sup>s</sup> : 3 qua <sup>rt</sup> rumm . . .	00045
To 5 <sup>s</sup> p <sup>d</sup> y <sup>e</sup> Clarke for a Coppie of a Noate . . . . .	0050	By 36 <sup>lb</sup> of Candells at 1 <sup>ll</sup> per lb	00252
To 70 <sup>ll</sup> Sug <sup>r</sup> p <sup>d</sup> Nath: Patridge making a studs for the house & shoats for windowes . . . .	0070 0465	By Abnell of Froneth . . . .	00443
Disburstm <sup>ts</sup> upon y <sup>e</sup> Ketch providence . . . . .	2990	By Nath. Pattridge . . . . .	00300
Disburstm <sup>ts</sup> on y <sup>e</sup> ketch Con- tent . . . . .	0894	By one bl: rumm & bl: . . . .	00434
1 hh of bread dd math: Clarke for y <sup>e</sup> use of y <sup>e</sup> Elizab <sup>th</sup> . .	0529	By 7 water bl: . . . . .	00260
To Severall Cloths w <sup>ch</sup> were John Stoughton's . . . . .	0517	26 gall: ¾ rumm & a bar <sup>ll</sup> . .	00361
To old Cloaths for y <sup>e</sup> Negro .	0050	By Rumm Reced from Majo <sup>r</sup> Hawkins . . . . .	01963
To a rundlett of Sug <sup>r</sup> for your use aboard . . . . .	0086	By 237 <sup>lb</sup> Cotton . . . . .	00464
p <sup>d</sup> John Corthue for your Ex- pencis . . . . .	0032	By Neet Sayles of a parcell of goods Jn <sup>o</sup> : Stoughton left . .	00763
To apar of Stockins for Ditto	0000	By a Noat of Tho: Rowston	15346
To Joseph Seaton for Ditto .	0265	By Hen: Feak . . . . .	653
To p <sup>d</sup> Tho: Dimondo for Ditto	0316	By Jn <sup>o</sup> Patridge . . . . .	1418 02071
To p <sup>d</sup> W <sup>m</sup> Greenoh per you 69: 1 p <sup>r</sup> stockins . . . . .	0239		41712
To p <sup>d</sup> Jonathan Hill for you .	1250		
Execution for you . . . . .	0050		
To 1 hh Rumm & hh & bringing from Loand . . . . .	0945		
To 80 <sup>ll</sup> of Sug <sup>r</sup> p <sup>d</sup> y <sup>e</sup> Cuntery .	0080		
Taking in a parcell of Rumm Reed from Hawkins . . . .	0026		
By my Commissons for y <sup>e</sup> aboves <sup>d</sup> Disburstm <sup>ts</sup> at 5 per C <sup>t</sup> being 20[6]84 shoger . .	1034		

A Coppee of an Acc<sup>t</sup> given Marke  
Hands by Dan: Burr

This is a True Coppie as Attests  
FreeGrace Bendall Cler.



*Sugar*

To Goods Laded aboard y <sup>e</sup>		
Ketch providence for virginia		
for Acc <sup>t</sup> of Cap <sup>t</sup> Clarke &		
yo <sup>r</sup> selfe . . . . .	12147	
To goods Laden on board the		
Hope of London Amos foard		
Command <sup>r</sup> . . . . .	7847	
for keeping upoone house 2 m <sup>o</sup>		
	0050	1933
paid Joseph Grafton for wayes		
	1883	
	<hr/>	
	41712	

S. F. 1090.5

Barbados August 4<sup>d</sup> 1662

M<sup>r</sup> Winsloe and Loving freind, I make bould Still to troble you.

I have sent you a Coppy of Letter Sent Once againe to Cap<sup>t</sup> Clarke & Acco<sup>t</sup> pray take Opportunitie to peruse them & Lett my Cousen Everill See them y<sup>t</sup> you may Speak to Cap<sup>t</sup> Clarke at yo<sup>r</sup> Leisure y<sup>t</sup> wee may once Come to a Conclusion, If M<sup>r</sup> Winsloe doe not receive 2 hh<sup>s</sup> of Sug<sup>r</sup> of M<sup>r</sup> Culpper I shall Send you 2 hh<sup>s</sup> per M<sup>r</sup> Prout I am Very Sorry it is no<sup>t</sup> yet paid if possible I can gett in any you shall not faile I have sent you bill of Laden for 5 butts Musc<sup>o</sup> Sug<sup>r</sup> Shipt per David Burr for my particular Acc<sup>t</sup> Consigned to M<sup>r</sup> Daggett w<sup>ch</sup> Cap<sup>t</sup> Clarke layes Claime to, but desire you to Receive the produce when Come to hand, I have sent Some 6 Sug<sup>r</sup> Loaves, One to yo<sup>r</sup> wife one to my Cousen Everill One to Goodee Briggs One to my Sister Hannford One to M<sup>rs</sup> Flint & one to Hitte per M<sup>r</sup> Winsloe I have sent you home a pair of Pistoles & holsters a rapier a bow, a draught of a Ship to hang up in y<sup>e</sup> hall, I have sent 20/<sup>s</sup> in mony to John, pray doe not Lett him Spend to fast & 20/<sup>s</sup> To Hitte & 40/<sup>s</sup> to Goodee Briggs, Goodee Briggs Saith she hath disburst Something for Hitte, y<sup>t</sup> I would have her Sattisfie herselfe, her mother Left y<sup>e</sup> charge of Hitty w<sup>th</sup> Goody Briggs which I would nout have my Children to be chargeable to any body (though trublsome) Soe long as I Live, pray gett y<sup>e</sup> pistolls & y<sup>e</sup> rapier fitted that they bee not Spoyled & Lett John pay for them out of his Money, Pray remember my Love to yo<sup>r</sup> good wife & children & my Children, Soe I Leave you to God and Remayne

yours to Command Marke Handess

. . . true Coppie as Attests FreeGrace Bendall Cler.

S. F. 1090.7

Barbados Agust 4<sup>d</sup> 1662

Cap<sup>t</sup> Thomas Clarke

S<sup>r</sup> yo<sup>r</sup> Last receaued bearing Date 16 June Last wherein you Exprese a great deale of difficulty in Diuideing Our Debts & howse but rather should be sold, debts parted & you should receaue yo<sup>r</sup> sugar, but heere is no such quick Sale for howses in Barbados at present neither the Debts soe hastily receaued, my Desire hath bin any tyme this three years for a Diuicion but could neuer gaine itt which

is to my great Losse. Is it not a sad thing that a man shold be kept in partnership Joyned for two years all Dayes of his life & after Death his Children may be ruinated & neuer bring things to a period, how oft haue I prest vpon a Diuicion & how oft haue you promised it shold be soe & now send mee word that you would haue the howse Sold & the Debts Diuided, soe that my part of the howse must lye for your particular use & neuer receaue one hh<sup>d</sup> of sugar from itt soe long tyme pray S<sup>r</sup> observe the Golden Rule & Doe as you would be done by I was neuer bound prentice to you for all Dayes of my Life, Inclosed are acc<sup>t</sup> of proceedings in Virginia for M<sup>r</sup> Langworth acc<sup>t</sup> Cap<sup>t</sup> Eginton & m<sup>r</sup> Gale charge you with  $\frac{1}{4}$  part beeing the Order of John Stoughton which acc<sup>t</sup> also is inclosed, heere also acc<sup>t</sup> in Menados & fairfeild & if you please to haue the particulars (owned per Cap<sup>t</sup> Eginton & m<sup>r</sup> Gale) I shall send them to you Daniell Bur is going ofe & will medle no more w<sup>th</sup> your buisnese. I haue Left the buisnese with phelick Sanford onely to pay m<sup>r</sup> Gard that wee may not be Exclaimed vpon as receiuers John Stoughton hath receaued As appears of m<sup>r</sup> Gards sugar since I went to Virginia about 30 or 40000<sup>li</sup> what hee hath don with itt I cannot informe which you are sensible cannott but bee to my great Damage haueing Long wrought for itt, heers acc<sup>t</sup> of your particular whereby you will see Jn<sup>o</sup> Stoughtons Expences proued by Oath, I haue not since my going ofe to Virginia had one hh<sup>d</sup> of sugar shipt ofe per Jn<sup>o</sup> Stoughton tho. haue bin at halfe charge for Storeidge howse-keeping & a Man ag<sup>t</sup> him vpon my acc<sup>t</sup> & particular charge & haue acc<sup>t</sup> of no goods shipt for my acc<sup>t</sup> soe y<sup>t</sup> you cannot be vn sensible of my great Losse, there is no comicion charged for your owne goods sales nor returns which I thinke is a great deale of Injustice that I should haue noething don & you all for yo<sup>r</sup> selfe, I haue got Some freinds to settle Jn<sup>o</sup> Stoughtons acc<sup>t</sup> & haue sent you a Coppie I carry no Estate to Virginia of yo<sup>rs</sup> but yo<sup>r</sup>  $\frac{1}{8}$  part of Katch content nor none can at present be gotten but what may bee goes to pay m<sup>r</sup> Gard, heere is 14000<sup>li</sup> sugar y<sup>t</sup> is found y<sup>t</sup> Jn<sup>o</sup> Stoughton shipt ofe for your owne acc<sup>t</sup> what more I know not nor what became of the rest I left the acc<sup>t</sup> Ball<sup>a</sup> per acc<sup>t</sup> of Sales & haue not had shipt ofe since out of the Joynt acc<sup>t</sup> one hh<sup>d</sup> nor vllue of sugar for my particular 5 Butts of sugar Daniell Borr ship<sup>t</sup> ofe to m<sup>r</sup> Doggitt for my particular acc<sup>t</sup> which was for meat I brought from Virginia & one horse I sould & now you write it is the Joynt Sugar which is noething soe I haue sent the bill of Ladeing to m<sup>r</sup> Winslow to proue the sugar shipt ofe for my particular acc<sup>t</sup> I desire you would not medle with itt but deliuer it to m<sup>r</sup> Winslow if m<sup>r</sup> Doggitt sends itt, your acc<sup>t</sup> betwixt you & mee God willing I will come home in May & cleere, Cap<sup>t</sup> Egginton & I haue not yet made vp acc<sup>ts</sup> for Seuerall Voyages but hope shall cleere before I goe away, for your part he desires to send a Lett<sup>r</sup> of Attourney to call him to acc<sup>t</sup> & that hee may be discharged & he will send you home to cleere itt so he does per many men y<sup>t</sup> hee may be cleere, & for buyeing & selling the Catches I haue don noething in itt Joseph Grafton is well ariued in England I haue Left my order with phelick Sanford therefore if you please to send any one ouer or appoynt any to Diuide the Debts & Estate heere shall be well satisfied y<sup>t</sup> I may once be cleere, as for the 100<sup>li</sup> at Manedos the ship was not come in when Cap<sup>t</sup> Moore Sayled thence as per Johannes Van Brogen<sup>s</sup> to mee Expresseth by first conveyance hee will send it you: By m<sup>r</sup> Prout shall send a cleere acc<sup>t</sup> when haue made vp with Cap<sup>t</sup> Egginton. heers<sup>s</sup>  $\frac{1}{8}$  part you haue in prouidence more then I. heers<sup>s</sup> 14000 sug<sup>r</sup> out Joynt Stock more then I heers<sup>s</sup> a great deale of sugar gone out of y<sup>e</sup> Joynt Stock to m<sup>r</sup> Gard to make John Stoughtons acc<sup>t</sup> good 30 or 40000<sup>li</sup>

sugar which brings all to little what became of y<sup>e</sup> bords by the prouidence I can finde noething of them as well as of a great Deale more what neglected now shall informe per m<sup>r</sup> Prout not clere but that I am

yo<sup>r</sup> faythfull freind & serv<sup>t</sup>

Mark Hands

This is a True Coppie as Attests FreeGrace Bendall Cler.

Since I left the Island John Stoughton had a trade of Shooting at the hole 500 or 1000<sup>li</sup> sug<sup>r</sup> a shoot which I feare wasted much the Estate, The Lord Winsor was heere w<sup>th</sup> fiue shippes (per ord<sup>r</sup> from the Kyng) & haue carried away many passeng<sup>rs</sup> with him to Jamaico & what of o<sup>r</sup> Debt<sup>rs</sup> are gon<sup>1</sup> I Know not, for the firkin of Butter I receaued of M<sup>rs</sup> Stoughton haue deliuered to Daniell Burr he hath deliuered the produce to you pray deliuer it her

. . . True Coppie as Attests FreeGrace Bendall Cler.

S. F. 1090.8

The Testimony of John Winslow Aged 75 years or there abouts

Testifieth & saith that about the year 1661 when Marke Hands went last from this place & Leaving w<sup>th</sup> me Some trust about his buisness & Especially about his poore Children y<sup>t</sup> were motherless for whome he did take more then ordinary Care & Especially y<sup>t</sup> now he was Like to Leave them fatherless too at present he desired me to bee Care full over them in his abcence & to see y<sup>t</sup> thay did not want for nothing y<sup>t</sup> might bee for their good & Comfort and he did promise that he would take Care to send means for their Comfortable maintenance & y<sup>t</sup> he had or would send 5 butt<sup>s</sup> of Sug<sup>r</sup> unto M<sup>r</sup> John Doggett of London y<sup>e</sup> Effects of w<sup>ch</sup> Sug<sup>r</sup> should bee ordred unto me here in New-England for y<sup>e</sup> use of his children, and to pay Some Small Debts he did here owe, as also he did tell me y<sup>t</sup> he had or would order Joseph Grafton who was bound from Virginia unto holland in a vessell wherein y<sup>t</sup> Said Hands was Interested to deliver y<sup>e</sup> Effects of what Intrest was his in y<sup>e</sup> vessell for y<sup>e</sup> vse aforesd: as also after his departure hence he did advise me by Seaverall Letters y<sup>t</sup> Daniell Burr had by his order shipped y<sup>e</sup> Said 5 butts of Sug<sup>r</sup> for y<sup>e</sup> propper Acc<sup>t</sup> of Marke Hands and Consigned them unto M<sup>r</sup> Doggett now y<sup>e</sup> year folowing Cap<sup>t</sup> Pearce coming here I did aske him if m<sup>r</sup> Doggett had shipped any Goods aboard for y<sup>e</sup> Acc<sup>t</sup> of Marke Hands, but he Said no, but he had shipped Some & Sent them unto Cap<sup>t</sup> Clarke, now I Supposing these Goods might bee the goods Marke Hands had given me advise of I went unto Cap<sup>t</sup> Clarke to Demmand them as Marke Hands his Goods he did owne them to bee Such a parcell of goods & y<sup>r</sup> returns of y<sup>e</sup> 5 butts of Sug<sup>er</sup> but would not owne them as Marke Hands and asked me how marke Hands should come by such an Estate of his owne I replied & asked him how he & other men Came by their Estates, and that, y<sup>t</sup> was very hard if an Industerous man in so many years as he had been in Barbados & Soe good a time of trading Could gett Soe much of his owne y<sup>t</sup> was very hard, but at Last he did tell me y<sup>t</sup> if I would take y<sup>e</sup> one halfe I might have y<sup>t</sup> for he Supposed y<sup>t</sup> Came out of y<sup>e</sup> joynt Stock, I did reply

<sup>1</sup> On 20 July, 1662, Lord Windsor, Governor of Jamaica, appeared at Barbados in command of a fleet, seeking recruits to settle his own colony. Owing to his royal backing the Barbadian authorities were unable to prevent him from carrying off sundry indented servants and debtors. V. T. Harlow, *History of Barbados*, p. 139.

I would have all or none and so parted but upon Second Considérations haveing occation to pay Some Small debts for y<sup>e</sup> Said Hands I went unto Cap<sup>t</sup>: Clarke & was content at present to take y<sup>e</sup> one halfe but did never See y<sup>e</sup> Invoice of y<sup>e</sup> Goods nor what there was come but he did tell me there was ten bar<sup>ls</sup> of Pouder & as I remember Some Ruggs & other Goods the halfe of w<sup>ch</sup> he said I might have I did at present take one bb: of powder & presently after Cap<sup>t</sup> Clarke fell Sick at m<sup>r</sup>: Trecks and there I went unto him for another w<sup>ch</sup> m<sup>r</sup> Treck did Deliver me & before I went for any more here Came News of m<sup>r</sup> Hands his Death & then Cap<sup>t</sup> Clarke would lett me have noe more, though I did make y<sup>t</sup> app<sup>r</sup> by a bill of Loading that Mark Hands did send me and did shew y<sup>t</sup> unto Cap<sup>t</sup> Clarke wherein was Expressed y<sup>e</sup> 5 butts of Sug<sup>r</sup> Shipped by Daniell Bur for y<sup>e</sup> proper Acc<sup>t</sup> of Marke Hands and Signed by Amos foard who did Carry y<sup>e</sup> 5 butts from Barbados to London but this bill of Lading I cannot Since finde and know not wether I Left y<sup>t</sup> w<sup>th</sup> Cap<sup>t</sup> Clarke in his Counting House or not, also there is Severall Letters y<sup>t</sup> I did make y<sup>t</sup> appeare to Cap<sup>t</sup> Clarke y<sup>t</sup> he had nothing to doe w<sup>th</sup> y<sup>e</sup> Goods y<sup>t</sup> he hath Kept all but y<sup>e</sup> 2 bb<sup>s</sup> of powder Neither did there ever Come y<sup>e</sup> worth of one peny to me of y<sup>e</sup> Goods shipped in Joseph Grafton or any acc<sup>t</sup>: of y<sup>t</sup> and further Saith not.

John Winslow

Sworne in Court y<sup>e</sup> 31<sup>th</sup> 11m<sup>o</sup> 1671 as Attests FreeGrace Bendall Cleric.

Clarke's reasons of appeal have not been found; Brackett's and Brattle's answer thereto (S. F. 1090.3) alleged that there was no effect in the summons, and reviewed the facts in the case, with a good many references to "widdows" and "orphants." "His pretence of producing an account in company to y<sup>e</sup> last court is a meer collusion . . ."; and in conclusion:

. . . it is humbly hoped that it will be evident y<sup>t</sup> y<sup>e</sup> orphants Interest is unjustly detained or interrupted by y<sup>e</sup> now [plan]tiff under colour and pretenc of partnership, & that upon that single con[sidera]tion the judgment now appealed from is just and legall, and that the cours of commerce and faith that is given in trade, reason, reputation, religion, & definitive law y<sup>t</sup> is established by y<sup>e</sup> most high & just judg. Exodus. 22. 11<sup>th</sup> determineth y<sup>t</sup> an oath of y<sup>e</sup> land ought to be between us, or if y<sup>e</sup> goods be by any dividable Interest torn in peices, let him bring it for a witnesse. And in y<sup>t</sup> judgment y<sup>t</sup> y<sup>e</sup> only wise judg shall direct this honoured court to give we shall acquiesce in y<sup>e</sup> orphants behalf, & pray y<sup>t</sup> in this & in all other your determinations y<sup>u</sup> may have divine assistanc and direction, being

Your honours Suppliants and servants.

Tho: Brattle

Peter Brackett

Boston the 5<sup>th</sup> of March 1671/2

See also the next two entries in the text, and below p. 79.]

#### BRACKETT &c v. CLARKE

Peter Brackett & Thomas Brattle Guardians as afores<sup>d</sup> against Cap<sup>t</sup> Thomas Clarke Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat y<sup>e</sup> 25<sup>th</sup> of January 1671 the pl<sup>t</sup> withdrew his Action.



## BRACKETT &amp;c v. CLARKE

Peter Brackett & Thomas Brattle Guardians to John Hands Excecutor to his father Marke Hands plaintiff against Cap<sup>t</sup> Thomas Clarke Defend<sup>t</sup> in an Action of reveiw of a case tryed at a County Court held at Boston January 1666 wherein Judgement was giuen against the said Brackett & Brattle as guardians vnto the said John Hands in the sume of two hundred six pounds six shillings & three halfe penny & due Damages according to Attachm<sup>t</sup> Dated the 25<sup>th</sup> of January 1671 . . . the Jurie . . . found for the Defend<sup>t</sup> costs of Court which was eight shillings & nine pence.

## BRACKETT &amp;c v. KENT

Peter Brackett & Thomas Brattle as aboues<sup>d</sup> plaintiffs against William Kent Defend<sup>t</sup> in an Action of the case for withholding the third part & better of Rent due for the howse that the said Kent Liveth in beeing to the vallue of tenn or Eleuen pounds in Money & Due Damages according to Attachm<sup>t</sup> Dated the 25<sup>th</sup> of January 1671 . . . the Jurie . . . found for the plantiffe Eleuen pounds in money & costs of Court twenty three shillings & two pence.

Execucion Issued y<sup>e</sup> 15<sup>th</sup> of y<sup>e</sup> 1<sup>st</sup> m<sup>o</sup> 167<sup>1</sup>/<sub>2</sub> for 12<sup>li</sup> 3<sup>s</sup> 2<sup>d</sup> [18]

## SAUAGE v. SMITH

Thomas Sauage Jun<sup>r</sup> plaintiff against Cap<sup>t</sup> James Smith Defend<sup>t</sup> in an Action of reveiw of a Case tryed at a County Court held at Boston for thirty six pounds due for the said Smiths wiues passage & his Childrens from England according to Attachm<sup>t</sup> Dated the 10<sup>th</sup> of January 1671 . . . the Jurie . . . found for the plaintiff twenty six pounds in money & costs of Court which was thirty six shillings & fowre pence.

## ATKINSON v. WILLIAMS

Theoder Atkinson Sen<sup>r</sup> plaintiff against Cap<sup>t</sup> John Williams Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 24<sup>th</sup> of January 1670. The Court (haueing considere the Attachm<sup>t</sup> with what was produc<sup>d</sup> & prou<sup>d</sup> in Court against the plaintiff Theoder Atkinson) doe Judge that as there was no ground of Action, soe it was a vexatiose suite

contrary to y<sup>e</sup> Law title baratry<sup>1</sup> & therefore fine him tenn pounds fine to the County & fees of Court standing comitted till the Sentence be perform<sup>d</sup>. Theoder Atkinson appealed from this Sentence to the next Court of Assistants & the s<sup>d</sup> Theo: Atkinson in tenn pounds & Peter Brackett & Tho: Matson sen<sup>r</sup> in fue pounds apeice acknowledged themselves bound to . . . prosecute his appeale . . . & in y<sup>e</sup> meane tyme bee of good behauior.

[John Williams was a merchant "of Southwark near London," and Theodore Atkinson a feltmaker of Boston. This case had been dragged from one court to another for a space of ten years or more. It is adequately dealt with up to this point in the printed Records of the Court of Assistants, iii. 137-8, 147, 203-7, and the unfavorable result of an appeal from this judgment to the Court of Assistants, March 12, 1671/72, is on p. 215. See also below, pp. 95, 247. In the meantime, owing to a disagreement of bench and jury in the Court of Assistants on September 5, 1671, (on the occasion of an earlier appeal), the General Court heard the case, October 8, 1672. It judged that Williams should recover 217*l* 16*s* 3*d* from Atkinson, and issued a writ of execution (return of writ December 3, 1673 is in S. F. 1276.18; cf. Records of Massachusetts Bay, iv<sup>2</sup>, p. 539, 571). Atkinson appealed again to the General Court, October 19, 1672 (original signed in S. F. 1276.26), and apparently in vain. Not discouraged by these successive rebuffs, Anthony Checkley, attorney for Atkinson, attempted a new action against Williams in the County Court on January 27, 1673/74 (S. F. 1276.35), on the ground that the premises seized under the previous writ of execution really belonged to his daughter Abigail Atkinson. At its January session in 1673/74 this Court again decided against Atkinson (see below, p. 372). Checkley's reasons of appeal from that judgment are in S. F. 1276.36; Williams's answer, in S. F. 1276.37.

Some of the earlier papers in the case are here reproduced for the light they may throw on Boston commerce and the fur trade between 1650 and 1660. Many others may be found in S. F. 1276 and S. F. 669. The first is a copy "owned" by Williams October 27, 1670, as attests John Pyncheon (S. F. 1276.44):

The 11<sup>th</sup> of Aprill:1659

m<sup>r</sup> Atkinson I thought good to Answer youre letter that you sent to mee Concerning our agreement, when you was with mee it was this, that what Goods I

<sup>1</sup> "If any man be proved, and judged a common barrater, vexing others with unjust, frequent & endles suites, it shall be in the power of the Court, both to reject his cause, and to punish him for his Barratry." Act of 1641, in The Book of the General Lawes and Libertyes (1660), p. 5.

sent you & stood to the Adventure of, them you were to allow mee 22<sup>l</sup> in the 100: & you were to make mee Returnes the same yeare, if not you were to allow mee 8<sup>l</sup> in the 100: for Interest & I haue sent you none but what was on my Owne Adventure, both to you & back to mee againe, Except these Goods that I sent to you the last yeare, 171<sup>l</sup> pounds 19<sup>s</sup>, & 6<sup>d</sup>, And the produce of them I shall Expect that you stand to the Adventure of them to mee, & because that most of them were goods, that you did not write to mee for, & you Complaine that the hatts came to a bad market therefore I shall desire but verry reasonable profit, which will bee but fourteene pounds, if soe you send mee returnes this yeare, w<sup>ch</sup> will bee in all for them, 188<sup>l</sup> 19<sup>s</sup> And Concerning the goods that were in m<sup>r</sup> Garret, you say they were on my Account, I suppose the Bill of Lading doth not proue it soe to bee, but howeuer, you did ouer rate youre goods Iron was sold for 16<sup>l</sup> per Tunn, & likewise youre beauer was Ouer rated, I suppose if God should bring you heere againe, you & I should agree about it I hope; the Beauer you sent the last yeare I sold for the best aduantage for you; but not for my selfe, for I haue not receiued all the money for it yet, And that beauer you sent this yeare by m<sup>r</sup> Lock, I did proffer it to seuerall men & could get but 8<sup>s</sup> per<sup>l</sup> for it, & haue giuen till about August next to pay for it, there is loss in it, & more in that that came in Parker & Pearse ships but I could not helpe it. I beleieue if you had benn heere you<sup>r</sup> selfe, you would not haue made soe much of it as I did, I wrote to you seuerall times, that I sent you a hogshead of hatts, about October, the same yeare you were at London, the which ship had a long passage, it was about February following before Shee Ariued at new England, there was in the Hogshead, 27<sup>l</sup> 11<sup>s</sup> worth of hatts, but you would neuer since write to mee of the receiuing of them, & I wonder at it, if you had not receiued them I might haue receiued them of the master, you write to mee that the goods in Garrets ship was on my account, but I pray Consider that you were to send to mee on youre Owne adventure, the spring following after you were heere, the sume of Two hundred & seauenty pounds & I haue receiued noe more since on youre adventure but: 198<sup>l</sup> beside what you haue ordered mee to pay to others & that was in Bills of Exchange

I haue heere sent you an Account, what I haue receiued & what I haue pajd since this time Twelue month

	<i>li s d</i>
Receiued of m <sup>r</sup> Peake 71:12.6 . . . . .	071:12:06
Receiued of Capt: Hunt, 4 <sup>l</sup> for interest . . . . .	034:00:00
Receiued of m <sup>r</sup> Waterman . . . . .	50:00:00
Receiued for Goods that came in Parker & Pearse . . . . .	104:16:10
Receiued & shall for goods that came in Lock . . . . .	70:17:00
Receiued of m <sup>r</sup> Sands the bill . . . . .	46:00:00
	<hr/>
	377:06:04

Paid for freight & other Charge of the goods that came in Parker & Pearse ships . . . . .	02:13:07
Pajd for goods that came in Lock . . . . .	01:03:06
Pajd m <sup>r</sup> Wilkey . . . . .	03:03:06
Pajd m <sup>r</sup> Daniell . . . . .	10:00:00
Pajd m <sup>r</sup> Briggs . . . . .	10:00:00

pajd John Reuell 12 <sup>l</sup>	12:00:00
Pajd to Humphery More	10:00:00
Pajd to John Reuell	10:00:00
Pajd for protesting m <sup>r</sup> Coles Bill	00:05:00
	59:05:03

M<sup>r</sup> Coales bill I haue sent you by the 3 Freinds & goods with an Inuoyce, the bill of 80<sup>l</sup> oft charged on Cap<sup>t</sup> Hunt hee say that hee haue nothing in his hand of his that Charges it on him, but when hee haue hee will pay it. you write to me that you would send on my Account 200<sup>l</sup> I pray send it in the Prudent Mary, if it please God to bring it to you, & what more you send on my Account Send it by m<sup>r</sup> Pearse, or whome you will if any other come, musquash skins will not yeald aboue 7<sup>d</sup> mincks & Fox will yeald 2<sup>s</sup>: there is less loss in the best beauer but for that which is meane will sell but for little & Rackoones must bee good to yeald 12<sup>d</sup> Easterne moose was sould for 30<sup>d</sup> & some for 8 groates a pound, I sould youre fine Southerne skins for 4<sup>l</sup>: soe hauing noe more to trouble you with, I rest hoping to see you heere the next spring if God permitt:

Yourre Freind

John Williams:

And when I receiue the other bill of 80<sup>l</sup> I shall pay the rest that you appoint mee to pay

S. F. 1276.54

Cap<sup>t</sup> Williams Credito<sup>r</sup> to Theode<sup>r</sup> Atkinson

Per Contra Debit<sup>r</sup>

	<i>li s d</i>		<i>li s d</i>
1656 By three bonds . . .	636:00:00	1656 Linnen Cloth dd Cap <sup>t</sup>	
Provided Cap <sup>t</sup> wil-		williams wife more or	
ljams shall produce		less . . . . .	03:10:00
the originall bond &		Sent by Locke & Gar-	
deliuer them to		ret 298 <sup>li</sup> 6 <sup>s</sup> 8 <sup>d</sup> made in	
Theode <sup>r</sup> Atkinson or		London . . . . .	282:07:10
his order		By m <sup>r</sup> Peake 45 <sup>li</sup> 05 <sup>s</sup>	
Money sent . . . .	006:11:03	made . . . . .	045:05:00
Goods sent . . . .	027:11:00		
Sep <sup>t</sup> 56 To freight & charge		1657 By Butler 58 <sup>li</sup> 11 <sup>s</sup> 6	
of Goods . . . . .	014:00:06	made of it . . . . .	061:14:06
To Ed: Johnson . . .	004:17:06	By Clarke 65:17:6 made	
To m <sup>r</sup> Daniel Ordered	020:00:00	of it . . . . .	065:04:08
To George Atkinson	010:00:00	By Cap <sup>t</sup> Peirce . . . .	028:08:00
Provided these Revel . . . .	030:00:00	By Garret 103 <sup>li</sup> 6 <sup>s</sup> 9 <sup>d</sup>	
Sums be Secured to be	010:00:00	last . . . . .	103:06:09
discharged Stauton . . . .	010:00:00		
Ap <sup>r</sup> 57 To Goods in Aprill	266:01:01	1658 By Peirce 32:5:9 by	
y <sup>e</sup> hatts not Sent for		Parker 8[li]: 14 <sup>s</sup> 5 <sup>d</sup> =	
Charges . . . . .	002:01:01	115 <sup>li</sup> 02 <sup>d</sup> made of it	104:16:10
By Cap <sup>t</sup> Butler . . . .	001:04:04	By Peake . . . . .	071:12:06
		By Hunt 30 <sup>li</sup> made . .	034:00:00



	<i>li s d</i>
1658 To Goods in the prudent Mary . . . .	114:12:05
not sent for To Goods by Locke	057:07:00
not sent for To Charges and Seuerall persons . .	059:05:01
1659 To Goods sent by the three Freinds . . .	039:05:07
To Goods by Cap <sup>t</sup> Peirce . . . . .	067:07:01
To Goods by Prudent Mary . . . . .	077:05:05
To Charge of Goods sent home . . . . .	003:19:04
To m <sup>r</sup> Daniell . . . . .	030:00:00
1660 To Goods Sent by five Shipps . . . . .	162:08:05
To Charges . . . . .	005:07:00
not taken up To a bond paid Briggs . . . . .	020:00:00
To merry worth . . . . .	010:00:00
To Revel . . . . .	010:00:00
To Lanceter . . . . .	020:00:00
To Freight &c . . . . .	002:10:06
1661 To Goods . . . . .	054:14:10
advance To Goods by prudent Mary and Clarke . .	114:05:04
not pd 1662 To Goods by Lord	037:17:06
To Charge of Goods &c . . . . .	012:09:05
To Goods by Clarke	019:01:09
To fright and Cus- tome of tobacco . .	007:02:00
To charges 4:11:4 . .	004:11:04
To Goods by Peirce	273:11:09
	<hr/>
	2241:08:06
To Logwood . . . . .	0003:17:04
Interest for Seuerall Sums to Sep <sup>t</sup> 16 <sup>th</sup> 1662	
Agreed by themselues	0100:00:00
more for Advance An <sup>o</sup> 1661 . . . . .	0017:00:00
	<hr/>
	2362:05:10

	<i>li s d</i>
By Waterman 50 <sup>li</sup> made . . . . .	050:00:00
By John Sans . . . . .	046:00:00
By Locke [ ] <sup>li</sup> 10 <sup>s</sup> made	070:17:00
By Bill of Loadin paid in 59 & 60 . . . . .	086:00:00
1659 A Beavar sk[yn] . . . . .	000:03:00
By Wood Greene 137:06:01 made . . .	137:16:06
By Scarlet 65:14:11 made . . . . .	068:14:06
By Burrowes . . . . .	008:15:00
By Wood Greene 95:03:00 made . . . . .	108:16:00
1660 By Gillam 48:00:00 made . . . . .	063:06:00
1661 By Wood Greene &c 147:00:00 made . . . . .	109:07:06
By the Society 154:8:6 made . . . . .	093:07:04
By Greenow 18 <sup>li</sup> 5 <sup>s</sup> 6 <sup>d</sup> made . . . . .	018:05:06
1662 A Byll of Cap <sup>t</sup> Scarlet Vnsold . . . . .	027:00:00
Goods on Peirce 157:13:04 . . . . .	157:13:04
	<hr/>
	1846:07:03
Beauer Unsold	

The 27:00:00. By Scarlet & the 157:13:4 vnsold, are after they are marketted to be made Good to — and by either partje notwithstanding the Summs heere accounted for w<sup>th</sup> what other Goods shall be shipt this yeare and the Beavar vnsold and othe<sup>r</sup> Peltry, and in Case of theise Goods lost at Sea there is then thirty five pounds on the adventure of Theoder Atkinson. . .

2362:05:10  
7020 — 1846:07:03  
4:11: 515:18:07  
273:11:09 2362:05:10 proof

This is a true Copie of the Acco<sup>t</sup> made vp at Leivt william Hudsons the 17<sup>th</sup> day of Sep<sup>t</sup> 1662 as taken from both parties onely Some Summes are misplaced in this Columne right aboue Examined by vs, Joseph Hills Richard Cooke This is a true Copie Compard w<sup>th</sup> that presented to & left w<sup>th</sup> y<sup>e</sup> Comitte of the Gen<sup>l</sup> Court octob<sup>r</sup> last 1670 & is on file as Attests Edw: Rawson Secr . . .

S. F. 1276.59

March: 22<sup>th</sup> 1659

M<sup>r</sup> Atkinson these Goods are in the Prudent Mary & in Pearce & in Scarlet, & in the Dolphin & in m<sup>r</sup> Gales ship, that is Fiue ships:

	<i>l s d</i>
A: Ferkin of file dust . . . . .	00:16:00
It: 2: p <sup>r</sup> of Cards . . . . .	00:03:00
It: 10: doz: of Bow strings . . . . .	00:16:08
It: 12 <sup>l</sup> of small packthred . . . . .	00:10:00
It: 24 <sup>l</sup> of Bigg packthred . . . . .	00:14:00
It: 38½ yards of Taffaty at 2 <sup>s</sup> 8 <sup>d</sup> per y <sup>rd</sup> . . . . .	05:02:08
It: 35: yards of Taffaty at 2 <sup>s</sup> 10 <sup>d</sup> per y <sup>rd</sup> . . . . .	04:19:02
It: 6: yards of Callico at 13 <sup>s</sup> 6 <sup>d</sup> per peece . . . . .	04:01:00
It: In Hatt bands . . . . .	28:11:00
It: 40 <sup>l</sup> of the best Cammell haire at 6 <sup>s</sup> 6 <sup>d</sup> per <sup>l</sup> . . . . .	12:06:00
It: 11 <sup>l</sup> : of Course Cammell haire at 3 <sup>s</sup> 6 <sup>d</sup> per <sup>l</sup> . . . . .	01:13:00
It: 40 <sup>l</sup> of the best Conney woole at 7 <sup>s</sup> 6 <sup>d</sup> per <sup>l</sup> . . . . .	15:00:00
It: 20 <sup>l</sup> of second Conny woole at 5 <sup>s</sup> per <sup>l</sup> . . . . .	05:00:00
It: 20 <sup>l</sup> of other sort of Conney woole at 3 <sup>s</sup> per <sup>l</sup> . . . . .	03:00:00
It: 12: doz: of brushes at 3 <sup>s</sup> per doz: . . . . .	01:16:00
It: ½ <sup>e</sup> of Gaules . . . . .	02:02:00
It: a ½ <sup>e</sup> Logwood . . . . .	03:00:00
It: a firkin of Coperas . . . . .	00:06:09
It: 12: doz: of Locks — 3 <sup>l</sup> . . . . .	03:00:00
It: ¾ <sup>e</sup> starch & 2 firkins . . . . .	00:19:00
It: 10 Ells of black Taffaty . . . . .	05:00:00
It: 5. doz Cards . . . . .	03:00:06
It: 220 <sup>l</sup> of white polony woole at 8 <sup>l</sup> per <sup>e</sup> . . . . .	17:08:04
It: 100 <sup>l</sup> of Welch bld: woole at 12 <sup>d</sup> . . . . .	05:12:00
It: 2: hhds: of Leefe . . . . .	02:06:00
It: for 2 hhds . . . . .	00:04:06
It: for packing the woole . . . . .	00:06:06
It: for the Carman to Carry them . . . . .	00:03:06
It: for Primage . . . . .	00:10:04
	<hr/> 128:07:11

Black Poloney Woole I could get none as yet, but I hope to get some before the Prudent Mary goe, m<sup>r</sup> Pearse Boat-swaine hath Ouer rated the woole, you must pay 50<sup>s</sup> per Tunn:

youre Freind

John Williams

The Originall of this whereof this is the Copie was Owned by Cap<sup>t</sup>: John Williams before the Committe this 27<sup>th</sup> October 1670 As Attests John Pynchon  
vera Copia Attest<sup>d</sup> per Edw. Rawson Secret

S. F. 1276.61

M <sup>r</sup> Atkinson I haue sent you in the Prudent & Mary	<i>l s d</i>
Imp <sup>rs</sup> : 40 <sup>l</sup> of the best Conny woole it Cost 10 <sup>s</sup> a pound . . . . .	20:00:00
It: 20 <sup>l</sup> of the second sort of Conny woole at 6 <sup>s</sup> . . . . .	06:00:00
It: 10 <sup>l</sup> of Cheeke Conny woole at 4 <sup>s</sup> per <sup>l</sup> . . . . .	02:00:00
It: 10 <sup>l</sup> of Taile Conny woole at 4 <sup>s</sup> . . . . .	02:00:00
It: 15 <sup>l</sup> of Gotes woole pelt: it Cost 7 <sup>s</sup> per <sup>l</sup> . . . . .	05:05:00
It: 3 <sup>l</sup> & 6 <sup>oz</sup> : of picktred woole, it Cost . . . . .	05:18:04
It: 12: Cutting kniues . . . . .	00:06:00
It: 2: doz: of great bow-strings . . . . .	00:06:00
It: 1: Ferkin of file dust . . . . .	00:17:06
It: Iron ware & nailes . . . . .	09:12:00
It: for Cask & Carman . . . . .	00:03:09
It: for primage . . . . .	00:04:06
	<hr/>
	52:13:01
It: for uenturing to you & back . . . . .	11:10:00

There is in the Hogshead 2 doz: of bowstrings for John Clough, I pray deliuer them to him:

There is 2 doz: of bow-strings for my Brother Williams & 2 Peckers & a knife for him. I pray deliuer them to him & there is Two pound of Flocks among youre flockes more then youre 20<sup>l</sup> I pray deliuer them also to my Brother they are in the three Freinds:

Goodman Truck hath benn with mee for 4<sup>l</sup> seuerall times but I had noe Order to pay it, but out of the goods that was in Garret, soe hauing noe more to trouble you I rest wishing youre prosperity.

Youre Freind

John Williams:

May 3<sup>d</sup> 1659 . . . vera copia . . . ]

#### ATKINSON v. TRUMBALL

Theodore Atkinson Sen<sup>r</sup> plantiff against John Trumball Defend<sup>t</sup> according Attachm<sup>t</sup> Dated y<sup>e</sup> 24 Janr<sup>y</sup> 1671 this Acion was by desire of plantiff & Defend<sup>t</sup> & consent of y<sup>e</sup> Court continued till the next Court of this County as Attests Freegrace Bendall Cler.

## EDWARDS v. SHEAFE

Thomas Edwards master of the Katch Society for & in behalfe of the owners of the abouesaid vessell plaintiff ags<sup>t</sup> Sampson Sheafe march<sup>t</sup> Defend<sup>t</sup> in an Action of the case for non payment of the Sume of thirty nine pounds seaventeene shillings & six pence Spanish money at the rate of fowre shillings a peice of Eight Due for the freight of Eleuen Tonns of goods shipped on the said vessell by y<sup>e</sup> said Sheafe & by him consigned to M<sup>r</sup> Samuell Baech marchant in Jamaica which he refused to receaue & also payment of the freight of the said goods denyed & other due damages according to Attachm<sup>t</sup> Dated the 24<sup>th</sup> Day of January 1671 . . . the Jurie . . . found for the defend<sup>t</sup> costs of Court, the Magistrates refused this verdict w<sup>ch</sup> falls to y<sup>e</sup> Court of Assistants in Case.

[Several depositions on this case are on file, together with the appeal, which apparently was not allowed.

S. F. 1140.4

Know all men by these p<sup>s</sup>ents That on the tenth Day of y<sup>e</sup> month of May in the year of our Lord God One thousand Six hundred Seaventy one, at the Instance & request of Thomas Edwards marrine<sup>r</sup> I John Peeke Notary publick Dwelling in P<sup>o</sup> Royall in the Island of Jamaica addmitted & Sworne by his Excelency S<sup>r</sup> Thomas Mudyford cheife Governor of the Said Island, went to the house of Samuel Bach m<sup>c</sup>chant Dwelling on P<sup>o</sup> Ryall & Speaking there to himselfe told him y<sup>t</sup> Thomas Edwards did protest against him for not receiving of Eleven Tunn of goods Consigned To him by M<sup>r</sup> Samson Sheafe of Boston merchant, and asked him if he would receive the afores<sup>d</sup> Goods, and the Said Samuel Bach answered me that hee would not receive them, and did thinck he not could be Compelled thereunto, And y<sup>t</sup> he did really think the freight of the Said Goods would Come to more money then the Cargo was worth. Therefore I the Said Notary at that Instance of the aforesaid M<sup>r</sup> Thomas Edwards have protested as I doe protest by these p<sup>s</sup>ents against the said Samuel Bach Merchant for not receiving of the Said Goods, & for all Costs Damages & Intrests already Suffered & yet to bee suffered for or by reason of non acceptance of the Same, And further I John Peake Notary at the Instance and request of the Said Thomas Edwards doe protest against y<sup>e</sup> Said Samson Sheafe of Boston merchant for Sending over Such goods as would not bee accepted being to the Damage of the Said Edwards, all w<sup>ch</sup> Damages Sustained by each party herein Conseynd to be recovered in time & place Convenient as of right shall appertaine This Done & protested in y<sup>e</sup> Said Towne of P<sup>o</sup> Royall the day & year afores<sup>d</sup>:

Quod abestator rogatus et requisitus

Jo: Peeke Not<sup>r</sup> Pub. 1671

. . . True Coppie . . . Attests Freegrace Bendall Cler.



S. F. 1140.1

Jameica 12<sup>th</sup> May 1671

This day Thomas Edwards appeared before me w<sup>th</sup> an information, that he had Consigned to M<sup>r</sup> Samuel Bach on y<sup>e</sup> Ketch Society, 4 Tunns of Fish 4: Tunns of Tarr, & 3 tonns of beare, and y<sup>t</sup> as master of y<sup>e</sup> Said Ketch gave out bills of Lading for y<sup>e</sup> Same, & y<sup>t</sup> he tendred y<sup>e</sup> Said goods to y<sup>e</sup> s<sup>d</sup> M<sup>r</sup> Bach And y<sup>e</sup> s<sup>d</sup> Bach absolutly refused to receive y<sup>e</sup> same: and thereon he Demanded my advice w<sup>t</sup> to doe w<sup>th</sup> y<sup>e</sup> s<sup>d</sup> goods, on w<sup>ch</sup> matter I have thought it reasonable & doe accordingly advice y<sup>e</sup> s<sup>d</sup> Edwards to protest against y<sup>e</sup> s<sup>d</sup> M<sup>r</sup> Bach for non Receiving the s<sup>d</sup> goods and after, (in regard y<sup>e</sup> s<sup>d</sup> goods are perishing) to put the Said goods in good hands, to bee Sold for the acc<sup>t</sup> of y<sup>e</sup> interseed, Given under my hand y<sup>e</sup> Day above

Tho: Mudy ford

S. F. 1140.5

The Deposition of Roger Prosser Aged 40 years or there about

Testifieth that Thomas Edwards master of y<sup>e</sup> ketch Society Committed to my Custody & left in my hands at Jamaca for the use of m<sup>r</sup> Sheafe Certaine goods w<sup>ch</sup> I understood were Consign'd to mr Sam<sup>ll</sup> Bach & by him Refused to wit, thirty two Bar<sup>ll</sup> of tar Sixteen hh of hake-fish Containeing four hundred of neat fish in Euery hogshh: & twenty foure barrells of Beere all w<sup>ch</sup> goods were left with me to dispose of for y<sup>e</sup> use of sd. Sheafe or any other person Concerned w<sup>ch</sup> goods were by me Reed: some time in May last deposed in Court the 5<sup>th</sup> of march 1671/2 Per Edw Rawson Secrety

Jamaica

S. F. 1140.6

Know all men by these p<sup>r</sup>sents that I Joel White of Port Royall Royall & Iseland abouesaid Cooper doe acknowledge to haue received of Roger Prosser of Boston in New England Marchant vpon y<sup>e</sup> accompt & for y<sup>e</sup> vse of m<sup>r</sup> Sheafe of Boston aforesaid Marchant, thirty barrells of Tarr, foureteene hogshheads of hacky fish containing foure hundred of neate fish in euery hogshhead w<sup>th</sup> twelue beere barrells, all w<sup>ch</sup> goodes as abouesaid I doe promise & ingage to render a juste accompt thereof vnto y<sup>e</sup> said m<sup>r</sup> Sheafe or his order when I am therevnto lawfully required: As witnesse my hand & Seale y<sup>e</sup> sixth day of July Annoque Domi: 1671.

Test

Joel White [sig. &amp; seal]

Arthur Lloyd

Samuell Mather

S. F. 1140.3

To the Hon<sup>l</sup>able Court of Assistance now Assembled in Boston Thomas Edwards Mast<sup>r</sup> of the Pink Society Most humbly p<sup>r</sup>senteth

That whereas there hath beene in former Courts a sute of Law Commenced betweene the said Thomas Edwards & Sampson Sheafe Merchant Concerning the freight of Certaine goods Shiped on the s<sup>d</sup> Vessall by the s<sup>d</sup> Sheaf from N. England to Jamaca where being Ariued the said goods were tendered unto the person to whome it was Consigned; but Hee Refusing to Receiue them; the said goods were by aduice of The Hon<sup>l</sup>able Gouvern<sup>r</sup> S<sup>r</sup> Tho: Mudiford Left in the hands of another for the acco<sup>tt</sup> of said Sampson Sheafe That Shiped them; The sd Sheaf denys paym<sup>t</sup> of the said freight the party with whom The said goods were Left saith that he hath Nothing to doe w<sup>th</sup> The said Edwards but Is to be accomptable to the sd Sheafe and Absolutly denys to pay the said freight so That (the Caus being thus stated) Except yo<sup>r</sup> Hon<sup>rs</sup> vouchsafe Reliefe to the sd Ed-

wards Either by ord<sup>r</sup>ing the sd Sheafe to pay the sd freight according to bills of Loading Or at Least that the said Sheafe giue ord<sup>r</sup> so the person that hath Re[c]eived the sd Goods in Jamaco to pay the freight Afores<sup>d</sup>: the sd Edwards is Like to be Dismist of His due and Loose His freight Contrary to that Knowne truth that the Labo<sup>rer</sup> is worthy of His hier all w<sup>ch</sup> he humbly Refers to yo<sup>r</sup> Hon<sup>rs</sup> as the fathers of the Country to Judge &c. According to yo<sup>r</sup> prudence to grant Reliefe to him who subcribes him selfe;

Yo<sup>r</sup> Hon<sup>rs</sup> Most humble Seruant & Suppliant Tho: Edwards ]

[19] BURNAM v. MACDANNIELL

Richard Barnum plaintiff against John Macdaniell Defend<sup>t</sup> in an Action of the Case for withholding certaine goods to the vallue of five pounds nine shillings fowre pence or thereabout & due Damages according to Attachm<sup>t</sup> Dated the third Day of y<sup>e</sup> Eleuenth month 1671 . . . the Jurie . . . found for the Defend<sup>t</sup> Costs of Court twenty shillings & six pence.

Execucion Issued y<sup>e</sup> 13<sup>th</sup> of y<sup>e</sup> 12m<sup>o</sup> 1671 for 20<sup>s</sup> & 6<sup>d</sup>

Vsher v. GARD

Hezekiah Vsher sen<sup>r</sup> plaintiff against the Goods or Estate of John Gard deceased now in the hands of Bernard Trott & W<sup>m</sup> Taylor Excecutors to the said Estate Defend<sup>ts</sup> in an Action of Debt of eigh- teene pounds seauen shillings & nine pence or thereabouts in money Due by booke with interest & other due Damages according to Attachm<sup>t</sup> Dated the first Day of December 1671 . . . the Jurie . . . found for the plaintiff Eighteene pounds thirteene shillings & nine pence in money & costs of Court which was thirty five shillings & eight pence.

GIBSON v. FAWRE

Richard Callicott Attourney to Christopher Gibson plaintiff against the howsing & Lands formerly the Estate of Eliazer Fawre Deceased &c Defend<sup>st</sup> according to Attachm<sup>t</sup> Dated the 15<sup>th</sup> of 11m<sup>o</sup> 1671 the plaintiff withdrew his Action.

GREENOUGH v. PAINE

William Greenough plaintiff against John Paine Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 25<sup>th</sup> of January 1671 the pl<sup>t</sup> vpon non ap- pearance was nonsuited.

## MAUEY v. YOUNG

Robert Mauey plaintiff against Cap<sup>t</sup> John Young Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated 25<sup>th</sup> of the 10 m<sup>o</sup> 1671 the pl<sup>t</sup> not appearing was nonsuited.

## GOLDEN v. NASH

Peter Goulden Assigne of Robert Winsor plaintiff against Jn<sup>o</sup> Nash of Boston Cooper Defend<sup>t</sup> in an action of debt to the vallue of three pounds & fue pence in money & goods & due Interest due by a bill of obligacion vnder his hand and by witnesses will be proued that he gaue the said obligacion for a Debt which Robert Marshall owed to the said Robert winsor but yet neuer paid it & all other due damages according to Attachm<sup>t</sup> Dated the 29<sup>th</sup> of 9<sup>br</sup> 1671 . . . the Jurie . . . found for the pl<sup>t</sup> three pounds & fue pence of which five shillings in money & Costs of Court which was thirty two shillings & eight pence.

## WADE v. BROUGHTON

Jonathan Wade Attourney of Jacob Willett Cittizen of London pl<sup>t</sup> against Thomas Broughton Defend<sup>t</sup> in an Action of y<sup>e</sup> case for withholding three hundred fuety eight pounds sixteene shillings & two pence or thereabouts for goods sent by the said Willett to the said Broughton with forbearance & other due Damages according to Attachm<sup>t</sup> Dated the 22<sup>th</sup> of Decem<sup>r</sup> 1671 . . . [20] the Jurie . . . found for the plaintiff twenty eight pounds for a peice of Stuffe & that hee the Defend<sup>t</sup> pay or & render an Accoumpt within three m<sup>os</sup> of three hundred & eleven pounds tenn shillings & six pence beeing the Ballance of an acc<sup>t</sup> of sales rendered by the defend<sup>t</sup> & costs of Court forty shillings & eight pence.

Execucion issued Aug<sup>o</sup> 26: 1676

[ See note to Cooke v. Broughton below, p. 65.]

## EUERELL v. SUNDERLAND

James Euerell assigne of John Blackleidge Junior plaintiff against John Sunderlane Junio<sup>r</sup> Defend<sup>t</sup> in an Action of debt of seauen pounds foureteene shillings due by bill & due damages according to Attachm<sup>t</sup> Dated the 29<sup>th</sup> of y<sup>e</sup> 10<sup>th</sup>; m<sup>o</sup> 1671 . . . the Jurie . . . found for the plaintiff seauen pound fowreteene shillings in money & costs of Court w<sup>ch</sup> is twenty fowre shillings & fowre pence.

EURELL v. SUND<sup>r</sup>LAND

James Euerell assigne of John Blackledge Junio<sup>r</sup> plaintiff against John Sunderland Junio<sup>r</sup> Defend<sup>t</sup> in an Action of Debt of tenn pounds due by bill and due damages according to Attachm<sup>t</sup> Dat the 29<sup>th</sup> of 10 m<sup>o</sup> 1671 . . . the Jurie . . . found for the plaintiff tenn pounds one third money & two thirds porke at three pound a barrell, & Costs of Court which was seauenteene shillings & two pence.

## JOY v. GIBBS

Thomas Joy pl<sup>t</sup> against Robert Gibbs defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 23<sup>th</sup> of January 1671. the pl<sup>t</sup> withdrew his Action.

## JOY v. WOODMANCY

Thomas Joy pl<sup>t</sup> against John Woodmancy Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 23<sup>th</sup> of January 1671 the pl<sup>t</sup>: withdrew his Acion.

## JOY v. WOODMANCY

Thomas Joy pl<sup>t</sup> against John Woodmancy Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 23<sup>th</sup> of January 1671 the pl<sup>t</sup>: withdrew y<sup>e</sup> Acion.

[ See above, p. 45 and below, p. 101.]

## FREAKE v. HUDSON

John Freake plaintiff against Cap<sup>t</sup>: William Hudson Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 11<sup>th</sup> of 10 m<sup>o</sup> 1671. The pl<sup>t</sup> not appearing was nonsuited.

## MARSHALL v. Pinke Lenham

Robert Marshall M<sup>r</sup> of y<sup>e</sup> Pinke Lenham plaintiff against the Pinke Lenham beeing the Estate of George Norton Henery Greeland & Walter Barefoot Defend<sup>ts</sup> in an Action of the case for wages due vnto him as the master of her or comander in cheife & other disburstments vpon her to the vallue of or about one hundred & sixty pounds or what shall appeare justly due vpon accoumpt with due Damages according to Attachm<sup>t</sup> Dated the 29<sup>th</sup> of 9<sup>br</sup> 1671 . . . y<sup>e</sup> Jurie . . . found for the pl<sup>t</sup> two hundred & seauenty pounds eleuen shillings & Eleuen pence in money & Costs of Court thirty eight shillings & six pence.

Execucion issued for 272<sup>li</sup>:10:5 in mony 12 12<sup>mo</sup> 1671



## MOSELY v. MASON &amp;c

Samuell Mosely plaintiff against Arthur Mason & John Pease Executors of the Last will & testament of Joseph Deacons deceased Defend<sup>ts</sup> in an Action of the case for withholding a Debt of five pounds [21] or thereabouts in money due upon account for worke donn & goods deliuered to the said Deacon and due Damages according to Attachm<sup>t</sup> Dated the third Day of the Eleventh month 1671 . . . the Jurie . . . found for the plaintiff fowre pounds nineteene shillings and seauen pence in money & Costs of Court thirty fowre shillings and tenn pence.

## COOKE v. BROUGHTON

Leu<sup>t</sup> Richard Cooke plantiffe against the Goods, Debts or Estate that was formerly belonging vnto Mr Thomas Broughton & by him made ouer or Sold vnto Cap<sup>t</sup> Walter Price & Richard Cooke in behalfe of themselves & others of the Credittors of y<sup>e</sup> s<sup>d</sup> Broughton Defend<sup>t</sup> in an Action of the case for money Disburst for the managem<sup>t</sup> of that Estate & still remains due the sume of Eight hundred forty six pounds fowre shilling & five pence or thereabouts with interest for y<sup>e</sup> same for about tenn years with other Due Damages according to Attachm<sup>t</sup> Dated y<sup>e</sup> 29<sup>th</sup> Day of June 1671 this Acion was refer<sup>d</sup> from July to October court and thence hither & . . . the Jurie . . . found for the pl<sup>t</sup> one thousand fowre hundred & fowre pounds fiue shillings & seauen pence in Money & costs of Court The Magistrates refused this verdict & Soe it falls to the Court of Assistants in Case.

[ This is a small incident in a protracted series of suits about the estate of Thomas Broughton, a merchant who removed from Virginia to Boston in 1650 and engaged in real estate operations which got him into serious difficulties. An outline of these suits is given in the printed Records of the Court of Assistants, iii. 133-34. By a deed of trust dated April 20, 1659 (S.F. 314.2), Thomas Broughton of Boston merchant and Mary his wife conveyed (1) his moiety of a parcel of land about Windmill Hill in Boston, also called Centre Haven, including several dwelling houses, a brewhouse, bakehouse, malt mill, warehouse, and wharf, and (2) Noddles Island (East Boston, which he had purchased for £1378 of John Burch of Barbados in 1656 through the intermediary of Richard Leader the iron-master, but only half the purchase money had been paid), being one thousand acres or more of meadow and upland with a house, barns, and

garden, to Henry Shrimpton and Lieut. Richard Cooke of Boston, merchants, and Walter Price of Salem, merchant, his creditors to the amount of 4000*l*, to the end that they might satisfy themselves of his debts, and also satisfy his other creditors, of whom Anthony Stoddard and John Checkley or Chickly of Boston are especially named. Broughton's own schedule of his debts is in S.F. 314.1:

The Shedule of the names of those to whome I Thomas Broughton am indebted:

	<i>li ss d</i>		<i>li ss d</i>
M <sup>r</sup> John Chickley . . . .	450:00:00	M <sup>r</sup> W <sup>m</sup> Brenton . . . .	190:00:00
M <sup>r</sup> Henery Shrimpton: . .	150:00:00	M <sup>r</sup> John Hull . . . .	030:00:00
M <sup>r</sup> Walter Price: . . . .	400:00:00	M <sup>r</sup> Sam: Hall . . . .	450:00:00
M <sup>r</sup> Stoddard . . . .	400:00:00	M <sup>r</sup> Christpr. Hooper . .	240:00:00
M <sup>r</sup> Nath: Williams . . .	089:00:00	Sam: Ward . . . .	060:00:00
M <sup>r</sup> Rand: Nicholls . . .	040:00:00	Henery Short . . . .	050:00:00
M <sup>rs</sup> Ann Glou <sup>r</sup> widow: .	015:00:00	M <sup>r</sup> Richard Cooke . . .	300:00:00
M <sup>r</sup> Osborne . . . .	350:00:00		

A List of the names & sumes I Thomas Broughton haue tooke order and sent effects to pay but not yet heering what is discharged of them doe enter into the List of debts for their security if they appeare still due:

M <sup>r</sup> Heze: Vsher . . . .	300:00:00	M <sup>r</sup> Richard Russell . . .	100:00:00
M <sup>r</sup> John Harwood . . . .	500:00:00	Leif <sup>t</sup> Sprague . . . .	100:00:—
M <sup>r</sup> Walter Price . . . .	600:00:00	M <sup>rs</sup> Ann Glouer . . . .	120:00:—
M <sup>r</sup> Jonathan Ward . . . .	584:00:00	M <sup>r</sup> Hope Allen . . . .	200:00:—
M <sup>r</sup> John Hull . . . .	226:00:00	M <sup>r</sup> William Davis . . . .	160:00:—
The deacons of Boston		M <sup>r</sup> Haugh: minester . . .	036:00:—
Church . . . .	200:00:00	Henery Short . . . .	020:00:—
M <sup>r</sup> Nath: Williams . . . .	200:00:00	John Lake . . . .	080:00:—
M <sup>r</sup> Jacob Scheafe . . . .	250:00:00	M <sup>r</sup> Ben <sup>j</sup> Gillam . . . .	400:00:—
M <sup>r</sup> Henery Webb . . . .	150:00:00	M <sup>r</sup> John Croad . . . .	1000:00:—
M <sup>r</sup> John Knowles . . . .	190:00:00		

Mr. Simon Broadstreet forty thousand foote of boards a yeare for three yeares — successiue: Cap<sup>t</sup> Tho: Clark: 0600:00:00

Entered and Reecorded the 20<sup>th</sup> Aprill: 1659 per Edw. Rawson Record<sup>r</sup> . . .  
vera Copia: Attest Edw Rawson Record<sup>r</sup>

On the same date William Osborne, attorney of Thomas and Mary Broughton, “gaue full and peacable possession & liuery of seizen”<sup>1</sup> of the Centre Haven and Noddles Island estates (S.F. 314.2, 3). On April 20, 1659, Thomas Broughton conveyed to Hezekiah Usher, Henry Shrimpton, Richard Cooke and Walter Price, “his moiety of two Saw Mills at New-ichewanik River on Quampegon (Salmon) Falls together with his three

<sup>1</sup> An ancient English form of conveyance, which did not require a deed or a record. The two parties went to the actual piece of land that was to be conveyed, in company with whatever freemen they could collect, and the grantor, after describing the bounds in presence of the witnesses, gave livery and seizen by handing to the grantee a bit of turf from the land, or a stone, twig, or some such symbol.

fourth parts of the ship Hope" of 170 tons burthen, "then riding in Piscataqua River"; also toward satisfying the said debts; this deed is cited in a deed of trust dated June 23, 1659 (S.F. 320) from the Broughtons to Cooke and Price, after Usher and Shrimpton had disassociated themselves from the transaction.

At a general meeting of Broughton's creditors in Boston on December 24, 1662, they agreed that these estates should be managed for the advantage of all during the space of one year, Captain Thomas Clarke and Ensign John Hull, the goldsmith, to assist in the managing thereof (S. F. 596.4). One of the principal creditors to Thomas Broughton was John Checkley,<sup>1</sup> who refused to come in with the other creditors, obtained a judgment and execution "uppon part of the said Broughtons estate as pewter and bras a clock and other things" (S. F. 596.5), and then summoned Cooke and Price to answer according to a deed and schedule from Broughton to the value of 900*l*. In Cooke's plea (S. F. 596.5), printed below, he alleges that a part of what Broughton conveyed, notably the ship Hope, was not his to convey, and that the creditors had to purchase it from the rightful owner to gain possession; if Checkley would contribute toward these expenses, he could have his proportion of the dividend. The County Court, on January 27, 1662/63, gave a "speciall verdict" for Checkley against the Centre Haven estate for 470*l* 17*s* 6*d* (the text is in S. F. 962.10; see also S. F. 596.6 and the Court orders of Oct. 28, 1662, and January 26, 1663, printed below). Cooke *et al.* appealed, February 25, and their reasons (S. F. 596.7), including an interesting appeal to the Magna Carta provisions of the Body of Liberties, are printed below, as are Checkley's highly truculent "answers to their reasons of appeale (S. F. 596.6).

Checkley's "Objections against the validity of Mr. Broughtons deed of Center Haven and Nodles Island to Mr. Shrimpton, Price and Cooke" (S. F. 596.8) are also printed below, as are the "Answer to the objections."

In S. F. 596.10 is a deposition, dated January 3, 1662, of Anthony Stoddard, aged 56 years, witness to the original deed, supporting some of Checkley's contentions; bills of costs are in S. F. 596. 11, 12. It further appears from the notes in Records of the Court of Assistants, iii. 133-34, that Checkley managed to get Broughton imprisoned from 1664 to 1668, when he was released upon taking oath that he had not disposed of or concealed any part of his estate to the defrauding of Checkley. It seems

<sup>1</sup> This Checkley (1609-1685) was not the father nor any relation to the Angli-can controversialist of the same name—see New England Historical and Genealogical Register, II. 350.

that the original deeds to Cooke, Price, *et al.* were voided by the Court. This left every man to himself; and the present case represents an effort of Cooke to recover from that part of the Broughton estate of which Price was in possession. It began by suing out a warrant for Captain Price at the November session, 1671 (above, pp. 21, 27). The pleas by Cooke follow (S. F. 596.5):

Richard Cooke in the behalfe of him self and walter price humbly desireth that the pleas hee hath made in the case betwene John Chickley and them selues may bee Leaft vpon record in wrighting where by to prevent futer truble for words may bee forgotten the pleas weare as followeth

first that thay were summoned to answeere the Complaint of John Chickley according to a deede and sedwell to the vallue of Nine hundred pounds as appeareth by the summans in Court but noe such deede was produced by the plaintiff

2ly it was pleaded by the defendant that hee had endeavored to proue and boath now and at former Courts did alleage that John Chickley did accept of his debt with the rest of m<sup>r</sup> Broughtons Credditors; but this the said Chickley denied and would not Com in with them, and this was owned in Court by by his Attorney Captaine hutchenson as also m<sup>r</sup> stodder

3ly that John Chickley Arested the Estate of m<sup>r</sup> Thomas Broughton and obtained a Judgment and Execution vpon part of the said broughtons estate as pewter and bras a Clock and other things which is for the same debt hee now sueth for as appeareth by the records in Court which is altogether Illegall

4ly that the deede presented by the plaintife in the Court doth not oblige them vnto John Chickley so as to bee sued by him the defendants there in hath not made any Contract with the plaintiff nor doe stand obliged to him but with m<sup>r</sup> Broughton from home thay receaued the deede

5ly the deede presented sayth that thay shall together with paying them selues pay such and such but thay haue not payd them selues one penney nor to the vaillue of it vnto this day although thay haue payd m<sup>r</sup> Chickley a Considerable sum if hee doth accept it vpon the Conditions thay payd it, and therefore thay haue not violated thayer trust with m<sup>r</sup> Broughton vnto whom only thay are accomptable by that deede

6ly the said Broughton hath not performed with the defendants according to the said deede nor doe thay posses and Injoy what is there in Convayed as in portion for Nodles Island &c nor hath hee given vnto us any deeds or Convayences to manyfest any leagall right hee hath to it from the former and true owners of it as by this deede hee is obliged to: but wee find the Contrary by experiance also wee had vpon the same account sould vs three fourths of the shipp hope but wee Could not Injoy any part of it but were forced to purchas the same and pay for it our selues vnto the right owner and therefore wee haue noe reson to pay for that wee Cannot Injoy besids there are other things of the same Nature in which m<sup>r</sup> broughton hath not performed if the deed presented by m<sup>r</sup> Chickly giues him a legall power to receaue by the same rule it obligeth him to make good what m<sup>r</sup> Broughton hath therein sould vs and vpon that account wee will Comply with him

Richard Cooke

[Endorsed:] M<sup>r</sup> Cooks pleas, order to be kept on file & y<sup>e</sup> plaintiff to haue it to Ans<sup>r</sup> & returne it & Ans<sup>r</sup>



## S. F. 596.2

Att a County Court held at Boston 28<sup>th</sup> of october 1662

The Court considering of the Generall Courts order on M<sup>r</sup> John Chickleys petition Judge Meete to Respite the Determinations thereof till the County Court in January Next when the Jury on the Evidences produced by all partyes Concerned M<sup>r</sup> Checkley giueing M<sup>r</sup> Cooke M<sup>r</sup> Prise M<sup>r</sup> Bratle M<sup>r</sup> Bartholmew & M<sup>r</sup> Boyes Due summons then to Attend it, it shall then be assisted by Court & Jury. This is A true Coppy of the Courts order as Attests

Edw: Rawson Recorder

[Endorsed:] Gen: Court Ord<sup>r</sup> 20<sup>th</sup> of 8<sup>br</sup> 62

## S. F. 596.1

To the Marshall of the County off Suffolk o<sup>r</sup> his Deputy o<sup>r</sup> Constable of Boston

You are hereby required in his Mas<sup>ts</sup> name to Attach the goods Lands o<sup>r</sup> other Estate in y<sup>e</sup> hands of Richard Cooke & Walter Price made ov<sup>r</sup> to them by Thomas Broughton for y<sup>e</sup> payment of severall Creditors according to deed & Shedule thereunto Annexed, & fo<sup>r</sup> want thereof the bodyes of Rich Cooke & Walter Price o<sup>r</sup> Either of them, & take bond to y<sup>e</sup> value of Nine hundred pounds With sufficient Surety o<sup>r</sup> Suretyes fo<sup>r</sup> their o<sup>r</sup> Either of their personall appearances at the next County Court to be held at Boston then & there to Answer y<sup>e</sup> Complaint of Jn<sup>o</sup> Chickley in an action of y<sup>e</sup> case fo<sup>r</sup> that y<sup>e</sup> said Cooke & Price have not paid vnto y<sup>e</sup> said Chickley y<sup>e</sup> summ of fouer hundreded & seventy pounds Seventeene shillings & six pence, due to him from them by vertue of y<sup>e</sup> aforesaid deed & Shedule Therevnto Annexed, w<sup>th</sup> due dammages & so make A true Return hereof unde<sup>r</sup> yo<sup>r</sup> hand dated y<sup>e</sup> sixth day of y<sup>e</sup> Eleventh mounth called January 1663:

By the Court: Jonath. Negus

. . . A true Copie . . . Edw. Rawson. . .

[on reverse:]

I have Attached the goods debts o<sup>r</sup> Estates of Richard Cooke & Walter Price the two dwelling houses & ground also y<sup>e</sup> Bake house brewhouse & one Copper and the greatest parte of the Wharfe to the North ward of y<sup>e</sup> Bake house Commonly Called by y<sup>e</sup> name of Centr<sup>e</sup> Haven this 8 January 1663.

per me Rich Wayte Marshall

Vera Copia Edw. Rausion Record<sup>r</sup>  
Attachment to January Court 1663

## S. F. 596.3

1663: Att A County Court held at Boston y<sup>e</sup> 26<sup>th</sup> January: 1663:

John Chickley of Boston Merchant plantiffe ag<sup>t</sup> Richard Cooke of Boston & Walte<sup>r</sup> Price of Salem: Merchants in an Action of y<sup>e</sup> Case fo<sup>r</sup> that the said Cooke & price have not paid vnto y<sup>e</sup> sd Checkley y<sup>e</sup> summ of fouer hundreded & seventy pounds seventeene shillings & six pence due to him from them by virtue of a deed & schedule to it Anexed from Thomas Broughton to them w<sup>th</sup> due damages according to Attachment Dat: y<sup>e</sup> 6<sup>th</sup> of January 1663: The Action was Called y<sup>e</sup> plaintiff & on of y<sup>e</sup> defendts: ie Rich: Cooke appeared y<sup>e</sup> Attachm<sup>t</sup> & othe<sup>r</sup> Evidences in y<sup>e</sup> Case produced were Read Committed to y<sup>e</sup> Jury & are on file w<sup>th</sup> y<sup>e</sup> Records of this Court the Jury also hearing y<sup>e</sup> pleas made by plaintiff &

defend<sup>t</sup> Brought in their virdict they found fo<sup>r</sup> the plantiffe five hundred sixty fouer pounds nineteene shillings & Eleven pence damage & Costs of Court forty two shillings & nine pence The defend<sup>t</sup> Appealed & said Rich: Cooke & Jn<sup>o</sup> Wiswall Acknowledged themselves & heires . . . bound in one thousand pounds to . . . prosecute s<sup>d</sup> Appeale to Effect:

S. F. 596.7

Richard Cooke & walter Price theire Reasons of Appeale from y<sup>e</sup> Judgm<sup>t</sup> of y<sup>e</sup> County Court held at Boston y<sup>e</sup> 27<sup>th</sup> of Janu<sup>r</sup>y 1662 in y<sup>e</sup> Case depending betwene Jn<sup>o</sup> Checkly & themselves.

First because y<sup>e</sup> Deed is made absolutely to us & o<sup>r</sup> heires for ever & not upon any Condition of forfeiture, or making of it invallid, neither are wee thereby made Agents or Attorneys unto Mr. Thomas Broughton, but legall Grantees, as appears in y<sup>e</sup> s<sup>d</sup> Deede, possession being giuen, & y<sup>e</sup> Deed acknowledged & Recorded according to y<sup>e</sup> Law here established.

The Jury were mistaken in y<sup>e</sup> ground, upon which they gaue in their Speciall Verdict: for (say they) wee find an Article or condition requiring y<sup>e</sup> Grantees to pay unto M<sup>r</sup> Jn<sup>o</sup> Checkly & y<sup>e</sup> other Credito<sup>r</sup>s foure thousand pounds, which (say they) we doe not as yett find performed. Now herein they were mistaken: for that Condition is legally performed by us, as appears by y<sup>e</sup> Credito<sup>r</sup>s acceptance there of to y<sup>e</sup> full vallue aboues<sup>d</sup>, to which we referre. But 2<sup>ly</sup> in case wee had not performed one tittle of it this cannot make y<sup>e</sup> Deede invallid: for soe farre as wee are there obliged it layeth us open to y<sup>e</sup> Law to be sued by him or them to whome wee are therein obliged, & M<sup>r</sup> Checkly may take his course at Law if he judgeth us to be therein obliged unto him; but this is not o<sup>r</sup> Case now, neither are wee sued upon any such Actet.

Wee doe humbly conceaue that y<sup>e</sup> hono<sup>rd</sup> Bench haue not only changed y<sup>e</sup> tearmes of y<sup>e</sup> quæstion, but also y<sup>e</sup> verry quæstion itselfe, y<sup>t</sup> was putt to them by y<sup>e</sup> Jury: for y<sup>e</sup> Jury's quæstion is, whither y<sup>e</sup> non performance of y<sup>e</sup> Article there specified doe according to Law make voyd y<sup>e</sup> Deed? Now y<sup>e</sup> Bench state y<sup>e</sup> quæstion thus, whither y<sup>e</sup> Deed to Cooke, Price & Srimpton be absolute & good in Law. And they Answer, y<sup>t</sup> y<sup>e</sup> s<sup>d</sup> Deede is noe legall Barre ag<sup>t</sup> s<sup>d</sup> Checkly, & y<sup>t</sup> they do confirme y<sup>e</sup> judgmt. granted to y<sup>e</sup> s<sup>d</sup> Checkly at y<sup>e</sup> former Court, allowing him also y<sup>e</sup> costs of this Instant Court. Soe y<sup>t</sup> (as wee conceaue) they haue not giuen a resolution of y<sup>e</sup> quæstion as its stated by y<sup>e</sup> Jury, or as stated by themselves; & yet they give y<sup>e</sup> then Pl<sup>tf</sup>e costs of Court, & seeme to giue away o<sup>r</sup> estates alsoe. Now wee humbly desire y<sup>e</sup> hono<sup>rd</sup> Court & Jury to take notice, y<sup>t</sup> wee did not, neither doe wee oppose y<sup>e</sup> Court's judgmt formerly granted to M<sup>r</sup> Checkly: for y<sup>t</sup> judgmt was ag<sup>t</sup> M<sup>r</sup> Broughton & not ag<sup>t</sup> us: wee only oppose M<sup>r</sup> Checkly's extending his Execucion upon y<sup>e</sup> Estate in quæstion, which is not M<sup>r</sup> Broughtons', but o<sup>r</sup>s.

The former County Court hath a first & second time confirmed y<sup>e</sup> same Deede to be vallid & good in Law, upon which we proceeded & acted, disbursing many hundred pounds in paying offe workemen & repayreing part of y<sup>e</sup> s<sup>d</sup> Estate, & haue made many Contracts relating to y<sup>e</sup> same, & ran into severall Ingagem<sup>ts</sup> which would be too tedious here to relate, & haue soe gone on for allmost four yeares. Now if y<sup>t</sup> Deed, which y<sup>e</sup> Court accepted of as good & vallid in Law soe many yeares since, upon which y<sup>r</sup> hath beene such transactions & Ingagem<sup>ts</sup> shall now by y<sup>e</sup> same Court be condemned as invallid; then wee appeale unto all men

to judge what o<sup>r</sup> condition here is, & what sad consequences will follow; we shall be at an uncertainty what is vallid & what is invallid, what is Law & what not Law: this will bee y<sup>e</sup> way to kindle such a fire, as will not soone be quenched, & sett friends at enmity one with another; & this p<sup>t</sup>ence of healing one will wound many. Such a p<sup>r</sup>sident we judge, was never seene here before, & what y<sup>e</sup> issue will be y<sup>e</sup> Lord only knowes, we feare y<sup>e</sup> hazzard of y<sup>e</sup> ruine of some, y<sup>e</sup> multiplying of suits at Law by others, & when it will end who knowes. By all which we hope this hono<sup>rd</sup> Court & Jury will seriously considder & determine y<sup>t</sup> righteousness & equity may take place, which is all we desire.

M<sup>r</sup> Jn<sup>o</sup> Checkly accepted of his Debt as y<sup>e</sup> rest of y<sup>e</sup> Cred<sup>rs</sup> did, as appears by y<sup>e</sup> testimony of M<sup>r</sup> Rawson & M<sup>r</sup> Srimpton, which is also further confirmed by his receiuing of about foure score pounds of us in order thereunto, as appears per y<sup>e</sup> testimony of M<sup>r</sup> Timothy Prout.

Wee craue y<sup>e</sup> benefitt of y<sup>e</sup> Law page y<sup>e</sup> first, y<sup>t</sup> no mans Goods or estate shall be taken away from him, nor any wayes endammaged under collo<sup>r</sup> of Law or countenance of Authority; unless it be by vertue or equity of some express Law of y<sup>e</sup> Country warranting y<sup>e</sup> same, established by a Gen<sup>ll</sup> Court & sufficiently published. Now noe such Law or equity of it hath yett beene produced; & therefore o<sup>r</sup> Estate & others ought not to be so taken from us.

It will evidently appeare y<sup>t</sup> there is not y<sup>e</sup> least shaddow or coulo<sup>r</sup> of fraud in what is done, because y<sup>e</sup> estate made over unto us is not worth what is ordered unto others, though wee to whome its sould should not haue one penny for o<sup>r</sup> selues, by which it will appeare who will be defrauded if others doe as M<sup>r</sup> Stodder hath done, & yet he complaynes most of fraude.

Lastly we know not what place M<sup>r</sup> Stodders testimony tooke with y<sup>e</sup> hono<sup>rd</sup> Court & Jury, as also his reasons & many expressions charging us with plotting & fraude: wee say these expressions & charges of his are fallacious & without prooffe, & also y<sup>t</sup> Oath of his (to giue it y<sup>e</sup> best style wee can) was rash, Inconsiderate, & how farr short of truth he knowes or may know in time & place convenient, being told in Court y<sup>t</sup> y<sup>e</sup> publike Records would evidence ag<sup>t</sup> y<sup>t</sup> he would sweare: for he hath sworne y<sup>t</sup> M<sup>r</sup> Srimpton renounced y<sup>t</sup> Sale, thereby tending to proue it fraudulent; now y<sup>e</sup> s<sup>d</sup> Srimpton in open Court owned y<sup>e</sup> Sale, & as appeares per his testimony in Court sould y<sup>e</sup> same thing back againe, which fully proues he owned it.

The p<sup>r</sup>misses duely considered wee hope this hono<sup>rd</sup> Court & Jury will see just cause to defend o<sup>r</sup> right by reversing y<sup>t</sup> Judgm<sup>t</sup> so farr as it concernes us relating to y<sup>e</sup> Estate in quæstion, y<sup>t</sup> we may haue noe cause of future complaint either to God or man.

besides the deeds were made by the aduice and Councell of one whose Judg-  
ment in the Law was accountpted a bond most in this Cuntry to bee sound and  
good and this deede was then so accountpted by him self (25) (12) 62

Richard Cooke for him selfe and the rest Concerned

[Reed] 25<sup>th</sup> feb. 1662 per Edw. Rawson Record<sup>r</sup>

S. F. 596.6

John Chikley his Answers to Walter Price & Richard Cooks reasons of appeale  
from the Judgement of the Countie Court held at Boston. 26. Jan<sup>r</sup> 1663.



To the first

It rather consernes y<sup>e</sup> Court to answer then Jon Chikley: yet for Answer Richard Cooke may consider he could finde noe error in y<sup>e</sup> Attachment, & he had legal notis of it, w<sup>ch</sup> is all y<sup>e</sup> law requirs, and both caise & persons y<sup>e</sup> Court wel vnderstoode & gaue judgement accordingly, but there judgement pleased not Richard Cooke & therefore he condemnes it thinking him selfe more able to iudge then y<sup>e</sup> Court was.

To the 2<sup>d</sup>

the deede p<sup>r</sup>sented if Walter Price & Rich: Cooke had neuer accepted of it vpon y<sup>e</sup> tearmes it could not haue obliged them to pay Jon Chikley & then y<sup>e</sup> estaite had remaind m<sup>r</sup> Broutons, & then y<sup>e</sup> extention of Jon Chikleys execution Legal, but Wal: Price & Ri: Cooke accepting of the conuayance, & receueing possetion vpon y<sup>e</sup> tearms there in expressed & puting it vpon record: It is then for y<sup>e</sup> benefit of al conserned in it, & y<sup>t</sup> Richard Cooke himselfe ownes in y<sup>e</sup> last of his reasons of appeale, & if for there benefit then it must be according to y<sup>e</sup> deede, w<sup>ch</sup> is y<sup>e</sup> paym<sup>t</sup> of there whole debts, not proportion, & if any of them be content w<sup>th</sup> a proportion yet Jo: [Chikley neuer] was, therefore he haueing bene soe many yeares w<sup>th</sup>held from his right by Wal: Price & Ri: Cooke he hopes now at last he hath got y<sup>e</sup> clue by y<sup>e</sup> right ende, & therefore sues y<sup>e</sup> estaite being in y<sup>e</sup> hands of Wal: Price & Ri: Cooke, who hath had y<sup>t</sup> estaite in there hands diuers yeares. mr Broughton by y<sup>t</sup> deede & seddal chearges vpon Wal: Price & Ri: Cooke to pay Jon Chikley 450<sup>l</sup> they accept as before, therefore not onely y<sup>e</sup> drawer Accountable to Jon Chikley but y<sup>e</sup> accepters alsoe:

To the 3<sup>d</sup>

It is wel Ri: Cooke wil make a supposetion he is obliged, yet he sath it is but in hope & confidence then he thinks it should seeme hope & confidence of his performance is not obligeing, & though he fail them of there hopes & confidence it matters not much. y<sup>e</sup> most y<sup>t</sup> can be, wil but make him false to his trust (w<sup>ch</sup> to him is a slight thinge) for y<sup>t</sup> is a worde alsoe vsed, in Suer trust & confidence, w<sup>ch</sup> is as stronge an obligation (I conceue) as can be, for faile of y<sup>t</sup> & noe thing is maide ouer; for it is fūe times in y<sup>e</sup> deede expressed it is maide ouer for thos ends & noe other but he sath it is to pay others together w<sup>th</sup> them selves. for Answer, there acceptance & receueing possetion, of Center hauen &c payes them selves, therefore m<sup>r</sup> Brouton haueing not onely paid them but deliuered them a further estaite to pay to Jon Chikley &c & they vndertaking paimt, & not doing it, is y<sup>e</sup> cause of this complaint. & y<sup>e</sup> complaint is not because they haue alienated but because they doe not alienate some part of y<sup>e</sup> estaite to pay Jon Chikley w<sup>ch</sup> m<sup>r</sup> Brouton alienated to them for y<sup>t</sup> ende, but they desire to keepe Jon Chikles estaite whether he wil or noe, & where as Ri: Cooke saith they haue p<sup>d</sup> Jon Chikley a considerable some w<sup>ch</sup> they indeuer to proue by m<sup>r</sup> Prouts oath, but compaire m<sup>r</sup> Prouts oath & his recept on y<sup>e</sup> back of y<sup>e</sup> bil of laiding w<sup>ch</sup> is in Court, & it wil appeare m<sup>r</sup> Proute did receiue of m<sup>r</sup> Broughton for y<sup>e</sup> vse of John Chikley y<sup>t</sup> some he speaks of. therefore Rich: Cooke is p<sup>d</sup> it. & it becomes an honest man when he is once p<sup>d</sup> not to rcaue it againe; if m<sup>r</sup> Brouton demand any thinge of Jon Chikley he is ready vpon other aco<sup>ts</sup> betwixt them to owne what is due.

To the 4<sup>th</sup>

If m<sup>r</sup> Broughton neither haue nor can make good what he hath sould to Wa: Price & R Cooke then Center hauen is free, & it is m<sup>r</sup> Broutons estaite stil, &



then Jon Chikleys extention of his execution is good vpon it. but if they will say onely some part fals short it is Answered, Walter Price & R Cooke should haue lookt to y<sup>t</sup> before they had ingaiged such painmts for it. it is ouer laite now: But y<sup>e</sup> Cr<sup>trs</sup> they ingaiged to pay is of too sorts in y<sup>e</sup> Seel<sup>1</sup> some certaine some vncertaine. thos they terme certaine comes to aboue 4000<sup>l</sup> those vncertaine aboue 5000<sup>l</sup> though I thinke indeede they were al vncertaine, & merely at randum. now John Chikleys comes among y<sup>e</sup> certaine ones & y<sup>e</sup> first of them, & to be suer he now hath made it more certaine then any haueing proued it in soe many Courts, w<sup>ch</sup> I question whether R Cooke be able to doe his; Jon Chikley alsoe is not onely expressed in y<sup>e</sup> Cedal but in y<sup>e</sup> deede alsoe, w<sup>ch</sup> noe other is but one more. & therefore beinge soe certaine he ought to be pd in y<sup>e</sup> first place; & whereas R Cooke in perteculer sath they can not enjoy Nodles Island: I conceue he hath confest enufe to proue they doe enjoy it; according to y<sup>e</sup> deed for y<sup>e</sup> Sugors sued for by R Cooke w<sup>ch</sup> was lent by m<sup>r</sup> Brouton was disbursed for part paymt for Nodles Island, & m<sup>r</sup> Brouton was in possetion of it, onely had not pd al y<sup>t</sup> was due for it; & by reason there of had not a deede for it, onely a promis by letters vpon paiment to haue it. & this was knowne to R Cooke from the begining to be y<sup>e</sup> title to it. yet he accepted of it. & this gaue R Cooke the aduantage to sue for y<sup>e</sup> sugors disbursed vpon it & recouered y<sup>e</sup> debt & damages, extended y<sup>e</sup> execution on Nodles Island, since hath disposed of it by saile, & I conceue receaued y<sup>e</sup> ful pay for it, how euer considerable somes R Cooke knowes wil be proued p<sup>d</sup> to him vpon it, 200<sup>l</sup> of y<sup>e</sup> mony R Cooke ordered to be p<sup>d</sup> m<sup>rs</sup> Sheafe for his perteculer debt he owte her — who gaue him a ful discharge for 200<sup>l</sup> receued by her of R Cooke & I thinke 200<sup>l</sup> is more then [ ] if there were noe more pd him then y<sup>t</sup>, but he knowes there is more p<sup>d</sup> him & he knowes we are not ignorant of it nether: And for y<sup>t</sup> clause conserneing the grantor not makeing good to y<sup>e</sup> grantee. We know R Cooke thinks reason is onely w<sup>th</sup> him, but we (whether reasonable or noe) conceue it a maxim y<sup>t</sup> if R Cooke bey a parsol of land and ingaige to pay 8000<sup>l</sup> for it to such & such men. they will haue there mony, whether his titel be good or noe. he should haue lookt better to it, & though R Cooke say this is y<sup>e</sup> state of y<sup>e</sup> caise, yet let me be bould to say he misses it: for though if it were soe yet still he is obliged but y<sup>e</sup> caise is better for y<sup>e</sup> defendant, for Rich: Cooke would keepe Center hauen, would keepe y<sup>e</sup> estaite to y<sup>e</sup> eastward, would keepe y<sup>e</sup> estate recouered by iudgmt vpon Nodles Island, w<sup>th</sup> w<sup>ch</sup> he hath p<sup>d</sup> part of his owne debts, would keepe al y<sup>e</sup> estaite at Barbados. & keeps his sonne there at this day to receue it, & yet he wants straw to make briks, & for y<sup>e</sup> Egiptian taske masters he mentions I know not howe he can meane except it be y<sup>e</sup> Court. But he hath soe much Straw & makes soe many briks I feare he aims at Building Babel for I see noe thinge but confution, but I hope y<sup>e</sup> honrd Court & Jury wil finde a way to disspersse part of y<sup>e</sup> materials to y<sup>e</sup> true owners & confirme y<sup>e</sup> Judgement of y<sup>e</sup> Countie Court: the estaite R Cooke owned when he tooke it, he lookt at worth much more then y<sup>e</sup> Sedal requird of them for it, and when y<sup>e</sup> first meeting was (w<sup>ch</sup> he would make a wronge vse of) there was not any mention of proportion, nor of some yeares after, onely desired to improue y<sup>e</sup> estaite Intire, not questioning the paimt of y<sup>e</sup> whole debts w<sup>th</sup> interest, but Jon Chikley declaired agt there keepeing any part of his estaite in there hands, or managing it for him, w<sup>ch</sup> they plead, w<sup>ch</sup> is far from his reiecting.

<sup>1</sup> Copyist's error for *Sedal*, i. e., *Schedule*; also printed *Cedal* in this same document. The soft pronunciation of the *sch* in *Schedule* still prevails in England.

yet they haue agt his wil soe many yeares detained w<sup>ch</sup> he hopes this Court & Jury wil consider of.

To the 5<sup>th</sup>

John Chikley before sued this estaite in this action & recouered then y<sup>t</sup> some of 470.17.6, and this estaite then was & now alsoe is iudged y<sup>e</sup> estaite y<sup>t</sup> was to pay it, onely y<sup>e</sup> court of Asistants iudged it was not m<sup>r</sup> Broutons estaite but Legally alienated to Wal: Price & R Cooke, yet if alienated it must be for y<sup>e</sup> ends exprest. And therefore Jon Chikley forced to bringe a new Action, & y<sup>e</sup> deede p<sup>r</sup>sented obliges Wal: Price & R Cooke to pay Jon Chikley 450<sup>l</sup> butt y<sup>t</sup> vpon tryal proued 470.17.6, but if y<sup>t</sup> were a wronge I suppose it may wel be pardoned. for if Wal: Price & R Cooke should pay interest for 450<sup>l</sup> from y<sup>t</sup> time they had Jon Chikleys estaite to this day w<sup>th</sup> y<sup>e</sup> damages legally due I sopose it would amount to a far greater some then as yet is recouered, w<sup>ch</sup> I hope this Court wil see iust cause to giue, & whereas it is againe alledged m<sup>r</sup> Prouts testimony I haue answered fully to it before, Jon Chikley receaued noe thing of them, but what he pd for to m<sup>r</sup> Proute by m<sup>r</sup> Brouton, & hath m<sup>r</sup> Prouts receipt for it on y<sup>e</sup> back of y<sup>e</sup> bil of laiding, yet R Cooke hath y<sup>e</sup> Impudens to blame y<sup>e</sup> Jury for Acting aboue there vnderstanding & soe commit an Error, soe both Bensch & Jury are Irronius Irrashonal & men wants vnderstanding compared w<sup>th</sup> R Cooke if [torn] be Judge.

To y<sup>e</sup> 6<sup>th</sup>

Though both bensch & Jury be Irrational in R Cooks openion, yet we shal answer Rich Cooks reason. Jon Chikley neuer renounst his debt, nether euer did Ed: Hutchinson or Anthony Stodderd. if Rich Cooke or any other for him would haue pd him, w<sup>ch</sup> in honesty he ought to haue donne, nor neuer reiected his claime to this estaite but alwise lookt at this estaite to pay him. but this he did he disowned to approue of R Cooke or any other to be his pursebearer he was able to be his owne, & there was not for some yeares any talke of proportion neither doth y<sup>e</sup> deede speake of any, but Jon Chikley denyed to ioyn w<sup>th</sup> any Cr<sup>trs</sup> to giue way R Cooke should haue y<sup>e</sup> managment of any part of his estaite, if Jon Chikley had no estaite in R Cooks hands nor if he ewte him noe thinge why did he speake to him about for bereing of it. But after some yeares R Cooke came to speake of proportion w<sup>ch</sup> Jon Chikley then alsoe reiected any thoughts of, and then indeede Jon Chikley did begin to feare a cheate, but considering y<sup>e</sup> tearms of y<sup>e</sup> deede. did thinke y<sup>e</sup> deede made ouer was onely matter of trust, y<sup>t</sup> phrase being vsed in it, & Wal: Price & R Cooke not performeing there trust he did conceiue y<sup>e</sup> deede void, & y<sup>e</sup> estaite reuerted againe to m<sup>r</sup> Brouton & therefore sued y<sup>t</sup> estaite as his. y<sup>e</sup> Court Judged as he did and gaue him Judgm<sup>t</sup> & y<sup>e</sup> execution was serued on y<sup>e</sup> estaite at Center Hauen. R Cooke makeing interruption the Court againe iudged y<sup>e</sup> extention legal. R Cooke appeals. y<sup>e</sup> Court of Asistants iudges y<sup>e</sup> deede to be valid w<sup>ch</sup> m<sup>r</sup> Brouton maide to Wal: Price & R Cooke. yet Jon Chikley conceueing if valid it is for y<sup>e</sup> ends exprest therefore brings his action agt y<sup>e</sup> same estaite in y<sup>e</sup> hands of Walter Price & R Cooke, recouers agt it vpon w<sup>ch</sup> R Cooke againe appeals. And instead of Reason Rails vpon & reuiles y<sup>e</sup> Court because they wil iudge this deede valid. who could doe noe other y<sup>e</sup> Court of Asistants haueing donne it before. & now he sath they alsoe iudge it more valid then it is in it selfe, w<sup>ch</sup> he cals a strange contradiction and then would couer him selfe w<sup>th</sup> making an inferens agt y<sup>e</sup> defendant, y<sup>t</sup> he would get an estaite vpon any Aco<sup>t</sup>, but in y<sup>t</sup> he striks more depely at the Court then him, for he brings his

caise to tryal by law, & except he iudge both Bensh & Jury Corrupt (w<sup>ch</sup> in them he cals his reasons I conceue he hath said noe lesse) he cannot haue his estaite but vpon a good & iust Aco<sup>t</sup>. That he arrested y<sup>e</sup> estaite of m<sup>r</sup> Broughton & that w<sup>ch</sup> he then iudged onely his estate is confest already y<sup>t</sup> y<sup>e</sup> execution was extended is alsoe confest & yet makes not for R Cooke at al, for it was extended upon this estaite w<sup>ch</sup> was & is in y<sup>e</sup> possetion of m<sup>r</sup> Brouton & is now sued. And though a smal matter of puter & brasse &c were in y<sup>e</sup> howse & soe taken w<sup>th</sup> it, yet R Cooks interruption p<sup>r</sup>uented y<sup>e</sup> proseding w<sup>ch</sup> as before ocations this Action. And for askeing aduice Jon Chikley can not be blamed. And for y<sup>e</sup> many vnheard of inuectiues agt the Judges & Jury to be Illegal, vniust, vnheard of practis, by noe law nor case Justifiable, we hope y<sup>e</sup> Court themselues wil giue answer, yet we shal p<sup>r</sup>esent this to consideration If y<sup>e</sup> Judgemt of y<sup>e</sup> Countie Court [be now confirmed] it is but Judgemt agt y<sup>e</sup> same estaite, & soe but one iudgemt, onely before conceaued to be m<sup>r</sup> Broutons & y<sup>e</sup> deede to Wal. Price & R Cooke inualid, but now we are directed by y<sup>e</sup> Court of Asistants how to looke at it, who haue iudged it valid. yet this estaite is that w<sup>ch</sup> was and is truly to pay this debt & Wa: Price & R Cooke are the persons to pay as y<sup>e</sup> Countie Court Judges, being sould for y<sup>t</sup> ende. & we haue noe doubt but y<sup>t</sup> y<sup>e</sup> Court of Assistants wil confirme y<sup>e</sup> same, not w<sup>th</sup> standing y<sup>e</sup> plantiues haue soe much villified both y<sup>e</sup> Caise & Judges. And though the plantiues affirme Jon Chikley is legally paid, yet y<sup>t</sup> is but to mantaine his prinssiple y<sup>t</sup> he is wiser then his Judges. But he knowes it is nether legally nor truly paid. Except he allow y<sup>t</sup> y<sup>e</sup> execution extended on Center hauen is legally extended: & soe cry peccau, & if it be then how he wil cleare him selfe of a vexatius suite & paying treble damages I know not, but to be suer y<sup>t</sup> law by him is abusiuey Cited.

To the 7<sup>th</sup>

The Plantiues haue not performed there [ ] selues one penny, though whether y<sup>t</sup> be truth or noe we leaue to what said before [ ] haue they pd others, but if they haue they haue not pd Jon Chikley who by deed [ ] must be one paid, who euer else is left vnpaid, & first pd for it is to pay Jon Chikley & others. but I beleue they haue not pd y<sup>e</sup> 4000<sup>l</sup> they boast of to haue pd nether according to law nor a good contience, — & for what appears vnder there hands if y<sup>t</sup> be a discharge they are y<sup>e</sup> better able to pay Jon Chikley, for the plantiues say they haue not alienated any estaite from themselues. if soe & y<sup>e</sup> Cr<sup>trs</sup> be pd then it is time to alienate to pay Jon Chikley: I feare y<sup>e</sup> Cr<sup>trs</sup> wil rather finde the plantiues to abuse them then y<sup>e</sup> defendant who medles not w<sup>th</sup> them, nether doth he ether them or plantiue any wronge, onely seeks for his iust due in A legal & iust way. And y<sup>e</sup> plantiues declares they receaued y<sup>t</sup> deede for y<sup>e</sup> vse of the Cr<sup>trs</sup>, & saith they soe alwise declaird, then surely they must not alwise keepe it them selues but Alienate at least part of y<sup>e</sup> estaite soe much as to pay the Cr<sup>trs</sup>. & they not paying Jon Chikley who is vnwiling to trust them, why should he be blamed for sueing for his debt w<sup>ch</sup> that deede alows him w<sup>th</sup> forberance — he being y<sup>e</sup> onely man named in y<sup>t</sup> deede w<sup>ch</sup> is to pay. & who euer is not pd he by name is to be pd, & pd his whole debt. And though you say y<sup>e</sup> somes set downe be aboue 8000<sup>l</sup> remembr 5000<sup>l</sup> of them are vncertaine & 4000<sup>l</sup> he cals certaine, amongst w<sup>ch</sup> are yo<sup>r</sup> owne, though I feare some of them as vncertaine as any: And though you aco<sup>t</sup> euery man must haue his iust proportion, yet I feare you are not very wiling to y<sup>t</sup>, for euery mans iust proportion by y<sup>t</sup> deede is his whole debt, & you lyable to



damages from that day you receued it. And if any haue maide other composition w<sup>th</sup> you, you haue cause to thanke them, But Jon Chikley hath not, nor neuer was wiling to haue you haue y<sup>e</sup> fingering of his estaite soe longe as you haue, And if it be an abuse to say we conceaue you indeuer to cheate, we cannot but thinke stil it is in yo<sup>r</sup> minde, but we hope y<sup>e</sup> Justis of y<sup>e</sup> Court wil p<sup>r</sup>uent you. And if you would not be thought to giue 1600<sup>l</sup> bribe you should not haue maide it soe apparent in yo<sup>r</sup> deede. you say in yo<sup>r</sup> deede you haue paid m<sup>r</sup> Brouton longe since 4000<sup>l</sup> & it appears in the Sedal he ewte you but 1800<sup>l</sup> certaine & but 600<sup>l</sup> more vncertaine w<sup>ch</sup> is but 2400<sup>l</sup> & it is to be questioned whether he ewte al y<sup>t</sup> or noe, soe there is 1600<sup>l</sup> at least, remains if you haue not pd it him as a bribe y<sup>t</sup> he may not cal you to aco<sup>t</sup> for any thinge. then it is stil in yo<sup>r</sup> hands, soe then you haue enuf in yo<sup>r</sup> hands to pay Jon Chikley still. though you should haue pd y<sup>r</sup> Cr<sup>trs</sup> 4000<sup>l</sup>: you owne Jon Chikley was prouided for amonge y<sup>e</sup> rest, but why then doe you put him to sue for his right, he was alwaies wiling to haue it out of yo<sup>r</sup> hands, and because he can not get it is forced to sue for it, therefore Craues both law [*torn*] Court as wel as you, & hopes to finde it by a cause in [*torn*] the Countie Courts verdit, w<sup>th</sup> an addition of y<sup>e</sup> damages since sustained both for troble & forberance & thereby to be freedde from yo<sup>r</sup> vexatious troubles.

John Checkley

S. F. 596.8

Objections against the validity of m<sup>r</sup> Broughtons deed of Center Haven and Nodles Island to m<sup>r</sup> Shrimpton, Price and Cooke

First the deed was made to three parties, and not to any two or one, m<sup>r</sup> Shrimpton renounced it therefore invalide, for it appears not to be a contract but a plott of m<sup>r</sup> Broughton with some one or two of the parties, for m<sup>r</sup> Broughton cannot sell, except m<sup>r</sup> Shrimpton will buy

2: It is made in Consideration of 4000<sup>l</sup> m<sup>r</sup> Broughton is truly and really indebted to the three parties, and in hand received by the seller, and yet in the shedull he ownes but 2450<sup>l</sup> owing to them, whereof 600<sup>l</sup> is made doubtfull, whether owing or not so that at the time when the deede was made there was but 1850<sup>l</sup> knowne to m<sup>r</sup> Broughton to be indebted to them

3: He p<sup>r</sup>tends that it is in Consideration that all his Credito<sup>r</sup>s might be payd theire due, & for that ende p<sup>r</sup>tends to haue annexed a shedule, but hath done it fraudulently Leaving out severall to whome he was Indebted, as some may be Instanced m<sup>r</sup> Edw: Ting Cap<sup>t</sup> Hutchinson m<sup>r</sup> W<sup>m</sup> Payne w<sup>th</sup> others

4: He p<sup>r</sup>tends in the deed the annexing of a shedull, but it appears at the Sealing of the deed noe shedull was annexed for it came after possession giuen w<sup>ch</sup> was not till the day after sealing

5: Not Long after the making the deed m<sup>r</sup> Broughton payd Nathaniell Williams out of that estate w<sup>ch</sup> he therein p<sup>r</sup>tends to make over to the 3 parties, as the Cattle on Nodles Island

6: The deed was made vpon Consideration that they to whom it was made over to should pay the Credito<sup>r</sup>s mentioned in the shedull besides them selues the value of 4000<sup>l</sup> the w<sup>ch</sup> in all the time they haue not payd, nor any part thereof not taken Course for it, but haue some one or two of them improved it to theire owne vse, Lived vpon it as also m<sup>r</sup> Broughton & seu<sup>r</sup>all of the said Credetors haue beene wholly or in part payd not by them but by mr Broughton, either out of the Estate pretended to be made over or otherwise



7 There is no absolute sale or alienation, but for mr Broughtons vse, so it is more properly a deed of Agency trust or Attorneyship, and the Accompt & remainder is to the grantor, being made only to secure it from m<sup>r</sup> Cole, for his Credito<sup>r</sup>s, so it is manifest It remains m<sup>r</sup> Broughton his estate in the hands of his Agents for his Credito<sup>r</sup>s therefore John Checkley by Law being proved m<sup>r</sup> Broughtons Credito<sup>r</sup> ought to haue Legall proceeding against the Estate of m<sup>r</sup> Broughton, in whose hands soeuer. The Consideratio[n] of the p<sup>r</sup>misses, I hope will satisfy the Court & Jury that I am to be payd, out of the Estate, being particul<sup>r</sup>ly & personally provided for in the deed

John Checkley

S. F. 596.9

An Answer vnto m<sup>r</sup> John Checkley his objections

In general they are but words, in which are many mistakes vntruths for the validitie, and Legallitie of the deed I appeale to the Records

1 But to the first particul<sup>r</sup> if but one did accept of the sale in the case it were sufficient: but the Plaintiff mistakes him selfe for all three accepted of the Sale, and in particuler m<sup>r</sup> Shrimpton: which appeares by his deed of Sale of the same thing that Stands vpon publike Records a Copie of w<sup>ch</sup> cannot be p<sup>r</sup>sently obtained, but for the truth of it, I refer to the testimony of the Secretary

2 To the second the deed being made for 4000<sup>li</sup> owing to three & yet but 2450 Set downe in the Schedull, by [them] the plaintifff may satisfy himselfe that there was no fraude Itended by m<sup>r</sup> Broughton, but that euery man should haue his just proporti[on] otherwise he would not have set it so downe in the schedull but further there was many hundred pounds more owing vnto m<sup>r</sup> Shrimpton, w<sup>ch</sup> he did not know, whether it was then payd, which was not then set downe, in the schedull, but [if] the deed be observed, and also what is said, in the schedull, i[t] is that euery man should haue his just debt, which w[as] not then Certainly knowne unto him, because he could not tell what was payd in Barbadoes and England, and as it was his Intent that euery man herein exprest should haue his Just proportion, according to what is really due, so it is also our Intent, not to haue one penny more then the rest according to our proportion of what is really due, and for that end, according to my promise I haue giuen it vnder my hand and Seale long since which Cap<sup>t</sup> Clark hath in behalfe of the Credito<sup>rs</sup> w<sup>ch</sup> was deliuered in the precence of m<sup>r</sup> John Checkly.

3 3<sup>dly</sup> Whereas he Chargeth fraudulency in that some are left out of the schedull, the weaknes of his reason needs no great strength to answer et, I would appeale to the penman of it: doth m<sup>r</sup> Stoddard Judge it fraudulency that he has gotten his whole debt & damage of m<sup>r</sup> Broughtons friends when others are vn-payd, thers no necessitie that a man should pay all his debts, with one & the same thing

4 To the 4<sup>th</sup> I referr to the Records.

5 To the 5<sup>th</sup> thers no trueth in it the Cattle specified were neuer so [ ]

6 To the 6<sup>th</sup> whereas its said that the deed was made vpon consideration, that they to whome it was made should pay the Creditors mentioned, besides themselves, the answer is the Plaintiff mistakes himselfe the deede saith no such thing, it is but together with themselves, but themselves haue not received the value of one penny, and whereas its said, they haue payd no part vnto any thats vntrue, for the Plaintiff himselfe hath beene payd a Considerable Sume as is proved in

Court, & by himselfe there Confessed, and whereas its Said that that sune one or two of vs, have Improved it for our owne vse, and Lived vpon it, which is altogether fals, and herein the plaintiff doth extremely abuse vs for its knowne that there was an Agent put in by the whole that is to say m<sup>r</sup> Coles part and ours, whose accompt hath beene rendered for the whole, and as for m<sup>r</sup> Broughtons Liveing vpon it, it is vntrue, if m<sup>r</sup> Stoddards and m<sup>r</sup> Checklys familys had no more supply then m<sup>r</sup> Broughtons hath from his they would be badly Cloathed & fedd as his is — and where as its said that seuerall of the Credito<sup>rs</sup> haue beene payd by m<sup>r</sup> Broughton, either out of this Estate or otherwise its in part true, for m<sup>r</sup> Stoddard hath beene payd: but he best knoweth how: not by this Estate, nor no man else Concerned but m<sup>r</sup> John Checkly

7 To the 7<sup>th</sup> the Sale and Allienation is Absolutly and wee are neither Agents nor Attorneys vnto m<sup>r</sup> Broughton the Estate is none of his, wee appeale to the Records — it hath beene and is Employed for the Credito<sup>rs</sup> to whome it is sould, and m<sup>r</sup> Checkley being one of them hath receiued as is above said, and if this hono<sup>d</sup> Court be pleased to appoint apprayzers of the Estate: and it doth then appeare that he is short of his proportion it shall be payd him, both our selues and the Credito<sup>rs</sup> desires that there may be no fraudulency, but that there may be Just & Equall dealings as wee doe manifest in our Petition vnto this hono<sup>d</sup> Court, the which I doe humbly Crave that it may be read & Considered by this hono<sup>d</sup> Court

Richard Cooke

true Copie . . . Edw Rawson, Record<sup>r</sup>]

Guardians of THOMAS, JAMES, JOSEPH, and MARY ROBINSON

Thomas Robinson appeared in Court & made choice of M<sup>r</sup> Anthony Stoddard to bee his guardian which the Court alowed & hee accepted.

James Robinson appeared in Court & made choice of M<sup>r</sup> W<sup>m</sup> Bartholameu for his guardian which he accepted & y<sup>e</sup> Court allowed.

The Court appoynts Deacon William Parks to be guardian to Joseph Robinson w<sup>ch</sup> s<sup>d</sup> Parks accepted of.

The Court appoints M<sup>r</sup> Joseph Rock to be guardian to Mary Robinson w<sup>ch</sup> he accepted.

HUCHINS discharge of bonds

Upon dew proclamation made in Court Mary Huchins was discharged from her bonds of good behavior.

Auditt of the Acco<sup>ts</sup> betwixt GIBBS & JOY

The Court Appoints M<sup>r</sup> Jo<sup>n</sup> Saffine & Cap<sup>t</sup> Jo<sup>n</sup> Hull to Audit y<sup>e</sup> Acco<sup>ts</sup> betwixt M<sup>r</sup> Robert Gibbs & Thomas Joy & that y<sup>e</sup> p<sup>lt</sup> & Defend<sup>t</sup> attend them & that y<sup>e</sup> Committe make returne as soone as possible.

[ See above, pp. 45 and 64, and consult index.]

## SARAH BUSHNELLS Guardian

Sarah Bushnell appeared in Court & made choise of Cap<sup>t</sup> James Oliuer to bee her Guardian w<sup>ch</sup> y<sup>e</sup> Court Allowed & hee accepted.

## MARY GEFFS'S Guardian

Mary Geffs Appeared in Court & made choise of Docto<sup>r</sup> Daniell Stone for her Guardian w<sup>ch</sup> y<sup>e</sup> Court allowed & hee accepted.

Court Order for Setlem<sup>t</sup> of GEFFS's Estate

The Court ord<sup>rs</sup> that for y<sup>e</sup> settlement of y<sup>e</sup> Estate of y<sup>e</sup> Late Jo<sup>n</sup> Geffs, his Relict having disposed of her Selfe in Marriage [22] to Cap<sup>t</sup> Eliz<sup>a</sup> Henry Nelson & is now leaving y<sup>e</sup> Country that y<sup>e</sup> s<sup>d</sup> Relict Sarah Geffs (now Nelson) shall have one third part of y<sup>e</sup> housing & land during her naturall life & one third of the Moveables is absolutely given to her & the Remaind<sup>r</sup> of y<sup>e</sup> Estate to bee divided between the Children.

JO<sup>n</sup> HANDS ags<sup>t</sup> CAP<sup>t</sup> THOMAS CLARKE

Leiv<sup>t</sup> Richard Cooke, M<sup>r</sup> Humphry Davie, M<sup>r</sup> Jo<sup>n</sup> Winsley & M<sup>r</sup> Anthon: Check by all appointed by this Court & consent of parties to Audit all Accompts betwixt Peter Bracket & Tho: Brattle Guardians to Jo<sup>n</sup> Hands & c<sup>o</sup> pl<sup>t</sup> & Cap<sup>t</sup> Thomas Clarke Defendant relating to all Transactions of partnership formerly had betwixt y<sup>e</sup> s<sup>d</sup> Thomas Clarke & y<sup>e</sup> late Marke Hands, & to make report to y<sup>e</sup> Court of this County as soon as possible wherevpon y<sup>e</sup> Acion is withdrawne.

[See above, pp. 45-52.]

JO<sup>n</sup> PAINE to JO<sup>n</sup> FREAKE

Boston pr<sup>o</sup> Feb<sup>r</sup> 1671. M<sup>r</sup> Jo<sup>n</sup> Paine appeared before major Eleaz<sup>r</sup> Lusher & Edw. Ting Esq<sup>rs</sup> & acknowledged a Judgm<sup>t</sup> ags<sup>t</sup> himselfe & Estate for Eighty Seaven pounds six shillings & Eight pence vnto Jo<sup>n</sup> Freacke paiable in good provitions according to two bills both dated y<sup>e</sup> 23<sup>th</sup> of Feb<sup>r</sup> 16 $\frac{6}{7}$ .

This done as Attest's Free Grace Bendall Cler.

Idem to M<sup>r</sup> Atwater, vid. p: 90.

## Freemen Sworn

Nathaniall Eaton, Rob<sup>rt</sup> Allen & Jo<sup>n</sup> Littlefeilde tooke the Oath of Freedom of this Jurisdiction.

## Guardians of MOSES, ESTHER, and EBENEZER PEIRCE

Moses Peirce Appeared in Court & made choise of Cap<sup>t</sup> Roger Clap command<sup>r</sup> of Castle Island in y<sup>e</sup> County of Suffolke (s<sup>d</sup> Pierce being y<sup>e</sup> 3<sup>d</sup> Sone of William Peirce Late of Boston deceased) to bee his Guardian w<sup>ch</sup> y<sup>e</sup> Court allowed.

Easter Peirce chose Phineas Vpham of Malden in y<sup>e</sup> County of Middlsex to bee her guardian w<sup>ch</sup> y<sup>e</sup> Court allowed & hee accepted.

The Court Appointed Joseph Web to bee guardian to Ebenezer Peirce w<sup>ch</sup> hee accepted of

X<sup>t</sup>OPHER WHEATON Sentenced

Christopher Wheaton of Hull w<sup>th</sup> Martha his wife presented for fornication. hee owned the presentment and preferred a humble petition, she being not well Appeared not, but y<sup>e</sup> humble desire of many of that Towne on her behalfe was rec<sup>d</sup>. The Court Sentences that they both make an acknowledgm<sup>t</sup> in publique at Hull to y<sup>e</sup> Satisfaction of y<sup>e</sup> Congregation, & pay twenty shillings fine to y<sup>e</sup> County & the party failing to bee whipt w<sup>th</sup> ten Stripes by y<sup>e</sup> Constable, & pay fees of Court this to be done within a month.

## [ PAINE selling Beere ]

Stephen Paine presented for selling Beere & Sider w<sup>thout</sup> Licence, y<sup>e</sup> s<sup>d</sup> Stephen Paine fined five pounds [23] according to Law & fees of Court.

Jo<sup>n</sup> DOILIE bound to good behavior

Jo<sup>n</sup> Doilie of Brantery presented for selling strong waters this s<sup>d</sup> Doily appeared not, & a contemp<sup>t</sup> was ordered to bee Entered, but since hee appeared & the presentm<sup>t</sup> not fully proved, y<sup>e</sup> Court sentenced y<sup>e</sup> s<sup>d</sup> Jo<sup>n</sup> Doily to bee bound to the good behavior, in five pounds himselfe & fifty shillings apiece two Sureties; Accordingly John Doily as principall in five pounds & M<sup>r</sup> Richard Parker & Samm. Heiden as Sureties in fifty Shillings apiece acknowledged



themselves bound to y<sup>e</sup> Treasuro<sup>r</sup> of the County of Suffolke, on the condition of y<sup>e</sup> s<sup>d</sup> Jo<sup>n</sup> Doily shall be of good behavior, & appeare at the next Court of this County.

### SAMM BROWNE Sentenced

Sammuell Browne presented for keeping a house of resort without Licence, is fined five pound's in mony to y<sup>e</sup> County and fees of Court Standing committed while y<sup>e</sup> Sentence bee performed.

### [ NORMAN acknowledged a judgment ]

Thomas Norman appeared before Major<sup>r</sup> Eliaz<sup>r</sup> Lusher Edw. Ting, & W<sup>m</sup> Stoughton Esq<sup>rs</sup> y<sup>e</sup> 9<sup>th</sup> 12 m<sup>o</sup> 1671. & acknowledged a Judgem<sup>t</sup> ags<sup>t</sup> himselfe & Estate, for One hundred twenty three pounds seaven Shillings & nine pence in mony vnto Caleb Tailo<sup>r</sup> of Boston. Merch<sup>t</sup> being the Issue of all accounts by Arbitration y<sup>e</sup> 8<sup>th</sup> 12 m<sup>o</sup> 1671.

Execution issued y<sup>e</sup> 10<sup>th</sup> 12<sup>mo</sup> 1671.

### Court Order about M<sup>rs</sup> JUSTINE PATTEN

The Court understanding the weaknes by reason of Age of M<sup>rs</sup> Justine Patten, relict to y<sup>e</sup> late Nathaniell Patten of Dorchester, & that she desires some Assistance, orders & appoints M<sup>r</sup> W<sup>m</sup> Stoughton & Cap<sup>t</sup> Hopestill Foster to bee Assistant Vnto y<sup>e</sup> saide Justin, & to inspet & secure y<sup>e</sup> Estate of y<sup>e</sup> Late Patten, & to cause an Inventory of s<sup>d</sup> Estate to bee forthw<sup>th</sup> taken & brought to this Court together w<sup>th</sup> y<sup>e</sup> will to bee proved & to make enquiry of all persons that have intermeddled w<sup>th</sup> y<sup>e</sup> Estate, that soe all persons concern'd in s<sup>d</sup> Estate, may according to y<sup>e</sup> will of the deceased have theire just dewes & bee noe waies dammified.

### WHARTON & BRATTLES caveat

Richard Wharton, & Thomas Brattle, appeared in Court & entred a caveat against any person Administring vpon y<sup>e</sup> Estate of y<sup>e</sup> Late Caleb Coggan.

### PENNIMAN sworn a freeman

Jo<sup>n</sup> Penniman of Brantery, tooke the Oath of Freedom of this Colony.

## BEARD &amp; GOODALES Oath

Thomas Beard & Nehemiah Goodale, made Oath in Court to the truth of y<sup>e</sup> Acco<sup>t</sup> of Goods was stol'n from on board y<sup>e</sup> vessells by William Reade & Jeffery Richardson. [24]

W<sup>m</sup> HAWKINS bond for Appearance

William Hawkins bound over to this Court, & also presented by y<sup>e</sup> Grand Jurie for being principally instrumentall & privately conveying in the night Hannah Hoppin without her friends consent who is reported to bee w<sup>th</sup> Childe. The s<sup>d</sup> Hawkins appeared & claimed a Jury soe was bound over to the next Court of this County, & y<sup>e</sup> s<sup>d</sup> W<sup>m</sup> Hawkins in one hundred pounds as principle, and Cap<sup>t</sup> Samuel Scarlett & James Mears as Sureties in Fifty pounds apiece acknowledges themselves bound to the Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke on condicion that y<sup>e</sup> s<sup>d</sup> Hawkins shall appear at the next Court of this County, and abide y<sup>e</sup> Sentence of y<sup>e</sup> Court, & not depart w<sup>th</sup>out Licence, & in the mean time bee of good behavior.

Jo<sup>n</sup> HURD JUN<sup>r</sup> bond for Appear.

Jo<sup>n</sup> Hurd Jun<sup>r</sup> convicted for being in the company of Jeffery Richardson & W<sup>m</sup> Reade Jun<sup>r</sup> at y<sup>e</sup> breacking open Thomas Grubbs seller y<sup>e</sup> Court committed him to prison after w<sup>ch</sup> y<sup>e</sup> Court being informed of his indisposition of body ordered bond to bee taken for his attending y<sup>e</sup> Court, & so to bee released, & accordingly y<sup>e</sup> s<sup>d</sup> Jn<sup>o</sup> Hurd in Eighty pounds as principall & Jo<sup>n</sup> Cowell & Joseph Hurd as Sureties in forty pounds apiece acknowledged themselves bound to the Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke on condicion that y<sup>e</sup> s<sup>d</sup> Jo<sup>n</sup> Hurd shall abide y<sup>e</sup> Sentence of y<sup>e</sup> County Court & not depart without Licence.

Juries verdict ags<sup>t</sup> ALICE THOMAS

Alice Thomas being accused of severall shamefull notorious crimes & high misdemeanors, she put herselfe upon Tryall of a Jury who brought in there verdict.

1. That if breaking open warehouses & Vessells in the night & stealing goods thence bee by Law Burglary then y<sup>e</sup> s<sup>d</sup> Alice Thomas is guilty of abetting accessory in Burglary. however that she is

guilty of abetting & accessory in Fellonious Theft in receauing buying & concealing severall goods stol'n out of Thomas Beards barque & m<sup>r</sup> Hulls & m<sup>r</sup> Pincheons warehouses.

2. That she is guilty of giving frequent secret and vnseasonable Entertainm<sup>t</sup> in her house to Lewd Lascivious & notorious persons of both Sexes, giving them oppertunity to commit carnall wickedness, & that by common fame she is a common Baud.

3. That She is guilty of Selling Wine & Strong Waters w<sup>th</sup>out Licence.

4. That She is guilty of Entertaining Servants and [25] Children from theire Master's and Parent's Families.

5. That She is guilty of the profanation of ye Lord's day, by Selling drinke & entertaining Idle persons & paiing money in a way of Trade vpon that day.

The Court vpon due consideration of this Verdict Sentenced her to restore to Jo<sup>n</sup> Pinchon Jun<sup>r</sup> forty one pounds fifteen shillings and three pence to Thomas Beard thirteene pounds seaven shillings and eight pence to Cap<sup>t</sup> Jo<sup>n</sup> Hull twelve pounds, all in money being y<sup>e</sup> proportion of that 3.fold restitution y<sup>e</sup> Law requireth also to pay fivety pounds fine in money to y<sup>e</sup> County and fees of Court and prison. Alsoe to bee carried from the prison to y<sup>e</sup> Gallows, and there stand one hour w<sup>th</sup> a rope about her necke, one end fastened to y<sup>e</sup> s<sup>d</sup> Gallows, and thence to bee returned to prison. & alsoe to bee carried from the prison to her one house and brought out of the gate or fore-doore strip't to the waste, & there tyed to a Cart's Taile, and soe to be whip't through y<sup>e</sup> Streete to the prison w<sup>th</sup> not vnd<sup>r</sup> thirty nine Stripes, & there in prison to remaine during the pleasure of this Court.

[ For earlier but similar doings at the widow Thomas', see Records of the Court of Assistants, iii. 226, and Diary of John Hull, in *Archæologia Americana*, iii. 232. She was given partial liberty in June, 1672 (below, p. 126). The General Court at its October session in that year, alarmed by the "bold and audacious Presumption of some, to erect a Stews, whore-House, or Brothel House," enacted that "every such Baud, Whore, or vile Person" upon conviction of setting up or keeping any such house, "shall be severely whipt, at the Carts-tayle, through the Streets, where such Offence or Offences hath been committed, with Thirty Stripes, and thence to be committed to the House of Correction . . . to be kept with

hard fare and hard labour," their recreation being once a week at least "in hair Frocks and blew Caps by the Executioner to be fastened to a hand Cart, and forced along to draw all the filth laid up in the Cart, through the Streets, to the Sea side. . . ." Colonial Laws of Massachusetts, reprinted from the Edition of 1672, p. 208.]

#### WILLIAM READ sentenced

William Read convicted for Severall felonious crimes and high misdemeanors, in breaking open Severall vessells & Warehouses, and stealing thence severall Goods. The court on dew consideration of y<sup>e</sup> Severall particulars Sentences him to pay to Jo<sup>n</sup> Pinchon Jun<sup>r</sup> y<sup>e</sup> Summe of forty one pounds fiveteen shillings & three pence in money to Cap<sup>t</sup> Jo<sup>n</sup> Hull Eight pounds in Like money to Thomas Beard thirteen pounds seaven shillings & eight pence to Richard Goodall eighteen pounds Eleven shillings & nine pence in money to Thomas Gross three pounds & three halfe pence to Richard Raymond, 3 fold to Experience Willis, 3 fold to Rob<sup>t</sup> Mason, 3 fold to Jacob Mason nine shillings being their proportion. hee shall goe from the prison to y<sup>e</sup> Gallows, and sit there one hour w<sup>th</sup> a rope about his neck one end fastned to y<sup>e</sup> Gallows and in his returne to bee stript naked to y<sup>e</sup> waste at his masters dore, & being made fast to a Cart's Tayle to bee whip<sup>t</sup> w<sup>th</sup> not und<sup>r</sup> thirty nine Stripes betwixt that and the prison & shall bee kept as a prison<sup>r</sup> & kept in hard servitude during this Court's pleasure.

#### JEFFERY RICHARSON sentenced

Jeffery Richardson convicted for severall felonious crimes & high misdemeanors, committed by him w<sup>th</sup> W<sup>m</sup> Read & others, in breaking open [26] Warehouses & Barques, & Stealing thence Severall goods The Court having strictly Examined y<sup>e</sup> severall crimes & evidences thereto relating most of w<sup>ch</sup> hee owned y<sup>e</sup> Court Sentenced him to pay forty one pound's fiveteen Shillings & three pence in mony to Jo<sup>n</sup> Pinchon Jun<sup>r</sup> eight pounds in like mony to Cap<sup>t</sup> Jo<sup>n</sup> Hull thirteene pounds seaven shillings & eight pence to Thomas Beard, to Richard Goodale Eighteen pounds eleven shillings & nine pence to Thomas Gross three pounds & three halfe pence the halfe of three-fold for what was stoln from onboard y<sup>e</sup> Mary Rose all in money being the proportion, & fees of Court. & that hee shall goe from the prizon



to y<sup>e</sup> Gallows, & there sit one hour w<sup>th</sup> a rope about his necke, one end fastned to s<sup>d</sup> Gallows, & in his return to bee strip't naked to y<sup>e</sup> waste at his master's Dore, & being made fast to a Cart's Tayle to bee whip't w<sup>th</sup> not und<sup>r</sup> thirty nine Stripes, betwixt that & the prizon & shall bee kept as a prizon<sup>r</sup> & kept in hard Servitude during the pleasure of this Court.

#### PEW sentenced

Thomas Pew, convicted for assaulting Ezekill Ham in the Streete in the night the Court Sentences him to pay six shillings & eight pence fine to the County fees of Court standing committed till y<sup>e</sup> sentence bee performed.

#### SAMM. BROWNE sentenced

Sammuell Browne, convicted for selling liquors without Licence, the Court Sentenced him to pay five pounds fine to y<sup>e</sup> County, & fees of Court & to put in bonds for his good behavior according to Law, Standing committed till the Sentence bee performed, & vpon his humble petition the Court ordered him, to give in bond for the two fines being ten pounds as alsoe for his good behavior & soe bee discharged his imprisonment & accordingly y<sup>e</sup> s<sup>d</sup> Samm. Browne acknowledged himself bound to y<sup>e</sup> Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke in twenty pounds as condition hee shallbe of good behavior, especially not to sell Liquors nor strong drinke w<sup>th</sup>out Licence & to appear at the next Court of this County.

#### JONES License

M<sup>rs</sup> Dorothy Jones, had her Licence continued to Sell Coffee & Chocolatoe for y<sup>e</sup> yeare Ensuing. & m<sup>r</sup> Morgan Jones as principle in ten pounds, & m<sup>r</sup> Jo<sup>n</sup> Joyliffe & m<sup>r</sup> Peter Lidgett as Sureties acknowledged themselues bound to y<sup>e</sup> Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke, on condicion that s<sup>d</sup> Jones shall obserue her Licence. [27]

#### BERNARDS licence

M<sup>rs</sup> Jane Bernard had her licence renewed to Sell Choffee & Chocolattoe for y<sup>e</sup> yeare Ensuing & Barth<sup>o</sup> Bernard as principle in ten pounds & Nathan<sup>tt</sup> Adams and Dan<sup>tt</sup> Turill as Sureties in five

pounds apeice acknowledged themselves bound to y<sup>e</sup> Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke, on condicion that y<sup>e</sup> s<sup>d</sup> Bernard shall obserue her Licence and not excede therein.

#### MARSHALLS bond

Robert Marshall being accused by Walter Barefoote for being an Atheist y<sup>e</sup> Court ordered him y<sup>e</sup> s<sup>d</sup> Marshall to bee committed to prison except hee put in bond of two hundred pounds to Appeare at the next Court of Assistance to bee holden at Boston. Accordingly y<sup>e</sup> s<sup>d</sup> Robert Marshall in one hundred pounds as principle, & Robert Couch, & Thadeus Makarty fivety pounds apeice as Sureties acknowledged themselves bound to y<sup>e</sup> Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolk on condicion that y<sup>e</sup> s<sup>d</sup> Marshall shall appear at y<sup>e</sup> next Court of Assistants to answer what shall bee alledged against him as to his being an Atheist & that hee shall abide by y<sup>e</sup> Sentence of y<sup>e</sup> s<sup>d</sup> Court & not depart without Licence. & in y<sup>e</sup> meane time bee of good Behavior

[ The following deposition is on file in S. F. 162102.1:

The Deposition of Anthony Crosbie aged thirty-five years or there abouts this Deponent testifieth that beinge in Company with Robert Marshall att boston the saide marshall in Discourse was Relatinge his travils with one Captaine Welsh a sea Captaine, he the saide marshall extoled the Saide welsh Extraordinarile for a braue souldier and good Disposition man as euer Came into a shipe, yet saith he the saide marshall [Welsh?] he was an Athest beleuing that there was nither god nor Deuell hell or heauen. I asked him the said Marshall whether all his men were of that belefe he saide some weere and some were not. them that would Read or pray thay might by his permission. I asked marshall what Beleife he was of after a little pause. He the saide marshall to the best of my Remembrance Replied I Could be or I am of Captaine welshes mind only I dare not speake what I thinke heere or in this Country]

#### BAREFOOTES Bond

Walter Barefootte being accused for speaking in a blasphemous mann<sup>r</sup> y<sup>e</sup> Court Ordered him to bee committed to prison, vntill y<sup>e</sup> next Court of Assistants except hee put in bond of two hundred pounds for his Appearance; & accordingly y<sup>e</sup> s<sup>d</sup> Walter Barefoote in one hundred pound as principall & Jo<sup>n</sup> Jeffards & Jo<sup>n</sup> Veering as Sureties in fivety pound apeice, acknowledged themselves bound to y<sup>e</sup> Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke on condicion that y<sup>e</sup> s<sup>d</sup> Barefoote shall appear at the next Court of Assistants, to Answere what shalbee

alledged against him concerning speking of Blasphemy, & that hee shall abide y<sup>e</sup> Sentence of y<sup>e</sup> Court & not depart w<sup>th</sup>out Licence, & in the meane time bee of good behavio<sup>r</sup>

JO<sup>n</sup> HURD sentenced

Jo<sup>n</sup> Hurd Jun<sup>r</sup> convicted for being present w<sup>th</sup> W<sup>m</sup> Read & Jeffery Richardson, & accessary to y<sup>e</sup> breaking open Tho: Grub sen<sup>r</sup> his Cellar dore; y<sup>e</sup> Court Sentenced him to pay forty shillings fine to y<sup>e</sup> County & fees of Court, & to put in bonds for his good behavio<sup>r</sup> standing committed while y<sup>e</sup> Sentence bee performed & accordingly y<sup>e</sup> s<sup>d</sup> Jo<sup>n</sup> Hurd in ten pounds [28] as principall, & Joseph Hurd & Jo<sup>n</sup> Cowell as Sureties acknowledged themselues alsoe bound in five pound apeice to the Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke on condition that y<sup>e</sup> s<sup>d</sup> Jo<sup>n</sup> Hurd shalbee of good behavio<sup>r</sup> & appeare at the next Court of this County.

JOSIAH LORINE sentenced

Josiah Lorine of Hingham bound over to this Court to answer for his contempt of y<sup>e</sup> Committe Appointed by this Court at theire last Sessions, to repaire to Hull & examine y<sup>e</sup> state of y<sup>e</sup> Estate of y<sup>e</sup> late Thomas Lorine, & to call all persons before them. ye s<sup>d</sup> Josiah Lorine refused to appeare though advised formerly by his brethren, & summoned by the dep<sup>t</sup> Gov<sup>r</sup> a member of s<sup>d</sup> Committe. The Court considering his offence sentenced him to pay five pounds fine in money to y<sup>e</sup> County & fees of Court standing committed while y<sup>e</sup> Sentence bee performed. Vpon his humble motion to this Court hee was ordered to giue in bond for the paiment of his fine the 30<sup>th</sup> of Aprill next & soe bee discharged for the present.

ROBERT BELTON sentenced

Robert Belton convicted by his one confession of breacking open the warehouse of Cap<sup>t</sup> Jn<sup>o</sup> Hull & Stealing two peices of Camletts from thence in companie of Jeffery Richardson, The Court sentenced him to pay eight pounds in money to y<sup>e</sup> s<sup>d</sup> Cap<sup>t</sup> Hull & to bee whipt w<sup>th</sup> fiveteen Stripes paing fees of Court & prizon Standing committed till y<sup>e</sup> Sentence bee performed.

JO<sup>n</sup> TAILOR Sentenced

Jo<sup>n</sup> Tailor, convicted for breaking open Paul Batts shop, & Tho. Grosses his house y<sup>e</sup> Court Sentenced him to bee whipt w<sup>th</sup> twenty Stripes & bee branded w<sup>th</sup> y<sup>e</sup> Letter B. paining fees of Court & prizon standing committed till y<sup>e</sup> Sentence bee performed.

JO<sup>n</sup> SMITH Sentenced

Jo<sup>n</sup> Smith, convicted for breaking open Thomas Grosses his house & stealing money & Rings the Court Sentenced him to bee branded w<sup>th</sup> y<sup>e</sup> Letter B. in y<sup>e</sup> forehead paying fees of Court & prizon standing committed till y<sup>e</sup> Sentence bee performed.

## ISAAC READ sentenced

Isaac Read, convicted for conveying a file & Gimblett to the prisoners (after hee was admonished to the contrary by m<sup>r</sup> Ting) whereby to practice theire Escape whereby the prizon was broken & Jeffery Richardson ran away The Court Sentenced the s<sup>d</sup> Read to bee whipt w<sup>th</sup> fifeteen Stripes, or pay ten pounds in money fine to y<sup>e</sup> County. [31]<sup>1</sup>

Take care that if they liue not orderly & industriously to proceede w<sup>th</sup> them according to Law.

[ Mrs FANEUIL ordered home ]

The Court Orders that the wife of Funnill return to Milton & that y<sup>e</sup> Selectmen there take care of her according to Law.

W<sup>m</sup> CARPENTER sentenced

William Carpenter, bound over to this Court to answere for beating his wife, y<sup>e</sup> Court Sentences him to bee whipt w<sup>th</sup> fifteen Stripes, & to giue in bond for his good behavio<sup>r</sup> paying fees of Court & prizon Standing committed till y<sup>e</sup> Sentence bee performed & vpon the motion of Edw. Porter y<sup>e</sup> Chandlor it was ordered his one bond should bee taken & accordingly y<sup>e</sup> s<sup>d</sup> W<sup>m</sup> Carpenter acknowledged himselfe bound to the Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke in y<sup>e</sup> Summe of ten pounds vpon condicion that he shalbee of good behavior vnto all men espetially towards his wife, & that hee shall Appeare at the next Court of this County.

<sup>1</sup> Pages 29 and 30 are wanting.



SAMM. RIALLS Bond for y<sup>e</sup> good behavior

Samm. Riall, presented for Idleness, y<sup>e</sup> Court sentenced him to put in bond for the good behavior Standing committed till y<sup>e</sup> sentence bee performed. & accordingly y<sup>e</sup> s<sup>d</sup> Samm. Riall as principle in ten pounds & Samm. Mosely as Surety in five pounds acknowledged themselves jointly & seuerally bound to the Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke, on condicion that y<sup>e</sup> s<sup>d</sup> Riall shalbee of good behavior & appear at the next Court of this County.

BENJA<sup>n</sup> HURD Sentenced

Benjamin Hurd, convicted for advising W<sup>m</sup> Read in prison not to confess the burning of the Barne & nothing else could hurt him w<sup>th</sup> severall such like expressions tending to encouradge him in denying his crimes, he confessed what was alledged, & y<sup>e</sup> Court sentenced him to be admonished & pay fees of Court.

## STEPHEN HOPPIN Sentenced

Stephen Hoppine, having dealt deceitfully w<sup>th</sup> the Selectmen of Dorchester, since his reference to them & liued idely; the Court Sentenced him to y<sup>e</sup> house of Correction & to bee kep't there to hard Labor, untill hee bee orderly Setled in some convenient Service according to Law w<sup>th</sup> the Approbacion of y<sup>e</sup> Selectmen of Dorchester.

W<sup>m</sup> LETHERLAND fined

W<sup>m</sup> Letherland presented for excessiue drincking y<sup>e</sup> Court Sentences him to pay three Shillings & four pence fine in money to y<sup>e</sup> County & fees of Court Standing committed till ye Sentence bee performed. [32]

## ZEBEON LETHERLAND sentenced

Zebeon Letherland, presented for excessiue drinking the Court upon the hearing of the case, though hee denyed it, was alsoe informed that hee was drunk that day m<sup>rs</sup> Whittingham was buried, w<sup>ch</sup> being fully proved they Sentanced him to pay twenty Shillings fine in m<sup>o</sup> to the County, & fees of Court Standing committed till the Sentence bee performed.

And alsoe the saide presentm<sup>t</sup>, being fully proued the s<sup>d</sup> Zebeon

Letherland was Sentenced to pay thirty Shillings in money fine more to the County, & fees of Court Standing committed till the Sentence bee performed.

CORNELIUS WHITE bond for y<sup>e</sup> behavior

Cornelius White, being cal'd as a witness that gaue Evidence to the Grand Jurie of zebeon Letherland's being druncke appeared in Court & excused him denying the s<sup>d</sup> Letherlande was druncke or in drinke. The Court taking notice of his Evill practice therein Sentenced him to bee bound to his good behavior & accordingly Cornelius white as principle in fue pounds & & as Sureties in fifty Shillings apiece acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> white shalbee of good behavior & appear at the next Court of this County.

MURPHEY sentenced

Brian Murphey, presented for being a common drunckard, w<sup>ch</sup> hee owned in Court, & also for striking Elino<sup>r</sup> Shearne that was w<sup>th</sup> Childe, & other misdemeanors The Court Sentenced him to be whip't w<sup>th</sup> fifteen Stripes paying fees of Court & prison, Standing committed till the Sentence be performed.

MURPHIES Wife sentenced

Margarett, the wife of Brian Murphey, presented for common railing & cursing & other misdemeanors, the Court Sentences her to be whip<sup>t</sup> w<sup>th</sup> ten Stripes paying fees of Court and prison. Standing committed till the sentence be performed.

POLLARD'S presentm<sup>t</sup>

William Pollard, presented for taking Eighteen pence for keeping a Horse twenty four hours w<sup>th</sup> Salt Hey onley, the s<sup>d</sup> Pollard appeared & alledged hee had take much pains w<sup>th</sup> the Horse in rubbing him being hot & alsoe that he had other provender, the Court warned him not to excede in that kinde, & pay fees of Court.

MIDDLETON senten<sup>a</sup>

W<sup>m</sup> Middleton & Eliz<sup>a</sup> his wife presented for fornicacion before marriage, the presentm<sup>t</sup> was owned & a humble petition preferr'd.

the Court Sentenced them to pay forty Shillings in money fine to the county & [ 33 ] Fees of Court, & that they make a satisfactory acknowledgment in the publique congregation where they usually hear, & thereof to bring a certificate under the hands of the Church officers of that Congregation, & the partie failing herein to be whip't w<sup>th</sup> ten Stripes & this to be done within one month next Ensuing.

CARPENTER'S presentm<sup>t</sup>

Sarah Carpenter, presented upon strong suspicion of being w<sup>th</sup> Childe, the Court ordered she should bee Searched by m<sup>rs</sup> Parker, m<sup>rs</sup> Williams, & m<sup>rs</sup> Sands who made return w<sup>th</sup> Goodwife Tailor a midwife, that she was not w<sup>th</sup> Childe.

GROSS sentenced

Isaac Gross, convicted of breaking prison formerly & Lying the Court Sentences him to pay fifty Shillings in money fine to the County & fees of Court, & to giue in bond for the good behavior standing committed till the Sentance be performed. & accordingly Isaac Gross as principle in ten pounds, and Jn<sup>o</sup> Williams & Tho: Gross as Sureties in five pounds apeice acknowledged themselves bound to the Treasurer of the County of Suffolke on condicion that Isaac Gross shalbee of good behavio<sup>r</sup> & appear at the next Court of this County.

PAINES fine respited

In Answer to the petition of Deacon Bass & Stephen Paine, the Court respites the last fine of s<sup>d</sup> Stephen Paine till the next Court of this County.

BENNETT sentanc'd

Ambrose Bennett Jun<sup>r</sup> convicted for breaking open Jer. Murrells Sellar & Stealing twelue Shillings in money from thence the Court Sentenced him to pay Thirty Six Shillings in mony to s<sup>d</sup> Murrell & bee branded paying fees of Court & prison standing committed till the Sentance bee performed.

MARY READ'S oath

Mary Reade, made in Oath in Court this 9<sup>th</sup> 12<sup>mo</sup> 1671. that the Childe that was born of her Body of w<sup>ch</sup> she was deliuered at Hampton was begot by Edw<sup>d</sup> Naylo<sup>r</sup> & no other man.

[Mary Read was summoned as witness in case of Edward Naylor, accused of adultery, Sept. 7, 1672. With Anna Keene she made the following deposition (S. F. 1148.16):

Anna Keene examined sath y<sup>t</sup> I heard m<sup>rs</sup> Simkins say she d[id] apprehend m<sup>r</sup> nailer was poisoned & she gaue her some thinge to expel y<sup>e</sup> poyson & being asked how she came by it she shooke her head & said noe more but said she would haue stayed longer w<sup>th</sup> y<sup>e</sup> [said?] Saml Emens his wife but y<sup>t</sup> she would goe to her because of her weaknes. owned in Cort by mary Read y<sup>e</sup> 7<sup>th</sup> of 12 m<sup>o</sup> 1671.

Edward Naylor was a frequenter of the widow Thomas's bawdy house, and often in trouble. See Index, also Records of Court of Assistants, iii. 224-26.]

HUNT and MILLER ordered out

The Court order's that Jo<sup>a</sup>. Hunt & Stephen Miller depart this Towne before the 15<sup>th</sup> Instant on penalty of Impison<sup>mt</sup>

ELIZA ARNOLD sentenced

Elizabeth Arnold, convicted of Cursing & Lewd profane Speeches, & other misdemeanors, the Court Sentanced her to pay ten Shillings fine in mony the County & fees of Court & to bee bound to the good behavior. & accordingly Eliz<sup>a</sup> Arnold as principle in ten pounds & Isaac Cosen's & Tho: Stanburry as Sureties acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion Eliz<sup>a</sup> Arnold shalbee of good behavior. & appear at the next Court of this County.

The Court Adjourned to y<sup>e</sup> 15<sup>th</sup> Instant [34]

At a County Court held at Boston, by Adjourn<sup>mt</sup> y<sup>e</sup> 15<sup>th</sup> 12<sup>mo</sup> 1671.  
John Saffine tooke the Oath of Freedom of this Colony  
The Court Adjourned to the 17<sup>th</sup> Instant.

The Court mett by Adjourn<sup>t</sup> 17<sup>th</sup> 12<sup>mo</sup> 1671.

Present

RI: BELLINGHAM Esq<sup>r</sup> Gov<sup>r</sup>  
JN<sup>o</sup> LEVERET, esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup>

EDW. TYNG  
W<sup>m</sup> STOUGHTON } Esq<sup>rs</sup>

The Court discharges W<sup>m</sup> Kentt from his Administration to the Estate of W<sup>m</sup> Atkins hee having brought in the Acco<sup>t</sup> thereof.



## IS: READ'S fine abated

The Court abates forty Shillings of the fine imposed on Isaac Read vpon the humble petition of his Father.

## FREE: BENDALL'S discharge

The Court discharges Free Grace Bendall from the future paying two Shillings per weeke (on the behalfe of Joseph Lister) to Mary Lion for her childe, who are departed this Country & given him a discharge.

Order about JO<sup>n</sup> GREENE

The Court Appoints, that the Acco<sup>t</sup> of m<sup>r</sup> JO<sup>n</sup> Greene given into Court concerning m<sup>r</sup> JO<sup>n</sup> Alcocks Estate, as alsoe the objections given in by JO<sup>n</sup> Williams bee deliuered to the abouesaide Greene who is to attend a Meeting of the Overseers & guardians of the above s<sup>d</sup> Docto<sup>r</sup> Alcock Children.

[A copy of John Alcock's will, naming Greene joint "Over Seer" with Edward Rawson, is in S. F. 1721.2.]

PATTENS Administ<sup>r</sup>

Administration to the Estate of m<sup>r</sup> Nathaniell Patten late of Dorchester, is granted, to m<sup>rs</sup> Justin Patten his relict she bringing in an Inventory of s<sup>d</sup> Estate, & giue Security to Administer according to Law.

The Court Adjourned till the 22<sup>th</sup> Inst<sup>n</sup>

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The Court mett according to adjournm<sup>t</sup> y<sup>e</sup> 22<sup>th</sup> 12m<sup>o</sup> 1671<sup>2</sup>.

## Present

THE GOV<sup>r</sup>  
DEP<sup>t</sup> GOV<sup>r</sup>

EDW<sup>d</sup> TING        }  
W<sup>m</sup> STOUGHTON    } Esq<sup>r</sup>

M<sup>r</sup> W<sup>m</sup> Brinsmead tooke the Oath of Freedom of this Colony.

The Court ordered that the bonds of JO<sup>n</sup> Tudor & his sureties bee deliuered up s<sup>d</sup> Tudor having departed y<sup>e</sup> Towne.

## MOXON sentenced

Thomas Moxon being vehemently Suspected of being dishonestly familiar w<sup>th</sup> Eliz<sup>a</sup> the wife of Jo<sup>a</sup> Langbury howeuer she denies that hee gaue her the halfe Crowne hee was formerly accused of (to bee naught w<sup>th</sup> her) the Court Sentences the s<sup>d</sup> Tho: Moxon to bee bound to the good behavior & pay fees of Court. [35]

## LORINES Administracion confirmed

The Court considering of the return of the Committee Lorines appointed by this Court to consider the State of the Estate of the Late Thomas Lorine of Hull, as alsoe the petition of m<sup>rs</sup> Jane Lorine his relict, & Thomas his eldest Sone to both w<sup>ch</sup> Administracion was formerly granted. The Court confirms theire former Administracion joining w<sup>th</sup> them Jo<sup>a</sup> the second Brother, & order them to attend the Law, in bringing in an Inventory of s<sup>d</sup> Estate to the next Court of this County.

The Court Adjourned till y<sup>e</sup> 29<sup>th</sup> Instant

Administracion to the Late Stephen Minot of Dorchester is granted to True Cross his Relict, she bringing in an Inventory of s<sup>d</sup> Estate, & giue Security to Administer according to Law.

This thus done As Attests Free Grace Bendall Cler

Present, the Gov<sup>r</sup> DEP<sup>t</sup> Gov<sup>r</sup> m<sup>r</sup> STOUGHTON.

The Court mett according to Adjournm<sup>t</sup>

Present

THE GOV<sup>r</sup>

DEP<sup>t</sup> GOV<sup>r</sup>

M<sup>r</sup> TYNG

M<sup>r</sup> STOUGHTON

Vpon the Informacion of Eliz<sup>a</sup> the Relict of George Ruggles to this Court that the ground on w<sup>ch</sup> the dwelling house of Jo<sup>a</sup> Smith standeth belongs to the Childe of the Late Jo<sup>a</sup> Wilmot, soe that if any casualty should happen to s<sup>d</sup> house, the aboues<sup>d</sup> Childe would be utterly disappointed, & frustrated of Security the Court intended for him. The Court therefore orders that Jo<sup>a</sup> Smith giue in Security to this Court's Satisfaction before hee alienate y<sup>e</sup> land that lies next m<sup>r</sup> Richard Wharton's.

Court ord<sup>r</sup> concern. Jo<sup>n</sup> HUNT &c.

The Court considering that notwithstanding what hath beene formerly ordered concerning Jo<sup>n</sup> Hunt & others, as appeares by the Select men of Boston's Applicacion to this Court that they yet continue in this Towne. It is ordered that forthw<sup>th</sup> a warrant be Issued from this Court to commit them to prison.

Court ord<sup>r</sup> concern. PATTEENS Estate

The Court orders that for the Setlem<sup>t</sup> of the Estate of the Late Nathaniell Patten of Dorchester, that Benjamine Beale haue forthw<sup>th</sup> the Land in Boston late bought of George Halsey w<sup>th</sup> the Emprouements & after the decease of his Aunt m<sup>rs</sup> Justine Patten hee is to haue halfe of the Lands & housing at Dorchester, the remaind<sup>r</sup> of the Estate is confirmed on the Widow to dispose as shee seeth meete.

Court ord<sup>r</sup> for the Keeper

Vpon the motion of the Keeper of the prison to this Court [36] relating to Extraordinary charge hee hath beene at for Securing of prison<sup>rs</sup> The Court ordered that the one halfe of s<sup>d</sup> Charge shalbee paide by this County Treasuro<sup>r</sup>

LOVELL's Administ<sup>r</sup>

Administration to the Estate of Isaac Lovell Late of Barbadoes deceased (w<sup>ch</sup> was formerly granted to Cap<sup>t</sup> Samm Vennor in behalfe of W<sup>m</sup> Boseman of Berbadoes March<sup>t</sup>) is granted to Phillip Fitz Randall (the aboues<sup>d</sup> Vennor being deceased) he having brought in an Inventory of s<sup>d</sup> Estate, giuing as Security to Administer according to Law.

HUTCHINSON Attorn<sup>y</sup> ags<sup>t</sup> ATKINSON

The Court desires & Appoints Cap<sup>t</sup> Edward Hutchinson to appear at the next Court of Assistants, for the answering the Appeale of Theodore Atkinson Senio<sup>r</sup> from the Sentance of this Court, where hee was fined ten pound for commencing a Vexatious Suite contrary to the Law title Barratry.

[See above, pp. 53-9.]

## [ NAYLOR'S Petition ]

The Petition & complainte of m<sup>rs</sup> Catharine Naylor ags<sup>t</sup> her husband Edw. Naylor is refer'd to the next Court of Assistants.

ROSEMORGAN to EDW. TING Esq<sup>r</sup>

Richard Rosemorgan of Charlestowne appeared before Jo<sup>n</sup> Leuerett Esq<sup>r</sup> dep<sup>t</sup> Gov<sup>r</sup> & Edw. Ting Esq<sup>r</sup> the 19<sup>th</sup> of 12m<sup>o</sup> 1671 & acknowledged a Judgm<sup>t</sup> ags<sup>t</sup> himselfe & Estate to m<sup>r</sup> Edw. Ting Treasurer of the County of Suffolke for ten pounds in mony.

Execucion Issued y<sup>e</sup> 23<sup>th</sup> 4 m<sup>o</sup> 1673 for 10<sup>li</sup>

MARKHAM to EDW. TING Esq<sup>r</sup>

Daniell Markham, of Mistick appeared before Jo<sup>n</sup> Leverett Esq<sup>r</sup> dep<sup>t</sup> Gov<sup>r</sup> & Edw. Ting Esq<sup>r</sup> & acknowledged a judgm<sup>t</sup> against himselfe & Estate to m<sup>r</sup> Edw. Ting Treasuro<sup>r</sup> of the County of Suffolke for ten pound's in mony. y<sup>t</sup> don 19<sup>th</sup> 12m<sup>o</sup> 1671

Execucion Issued y<sup>e</sup> 23<sup>th</sup> 4m<sup>o</sup> for 10<sup>li</sup>

## SERGEANT to BRADING

W<sup>m</sup> Sergeant of Amesbury appeared before Richard Bellingham Esq<sup>r</sup> Gov<sup>r</sup> & Edw. Ting Esq<sup>r</sup> & acknowledged a Judgm<sup>t</sup> against himselfe & Estate, for three pounds Eleuen Shillings in mony to James Brading of Boston. Boston. 19<sup>th</sup> March 167 $\frac{1}{2}$ .

## COLLINS to ATKINSON

Roger Collins appeared before Jo<sup>n</sup> Leverett Esq<sup>r</sup> dep<sup>t</sup> Gov<sup>r</sup> & Edw. Ting Esq<sup>r</sup> & acknowledged a Judgm<sup>t</sup> ags<sup>t</sup> himselfe & Estate, for sixteene pounds nine shillings & nine pence in boards or Staues to bee deliuered in Boston at price Currant to Theoder Atkinson Senio<sup>r</sup>. This done the 30<sup>th</sup> 2m<sup>o</sup> 1672. As Attests Free Grace Bendall Cler.

## LOVELL to DEXTER

Jo<sup>n</sup> Lovell of Weymouth Appeared y<sup>e</sup> 30<sup>th</sup> 2m<sup>o</sup> 1672 before Jo<sup>n</sup> Leverett Esq<sup>r</sup> dep<sup>t</sup> Gov<sup>r</sup> & Edw. Ting Esq<sup>r</sup> & acknowledged a judgm<sup>t</sup> ags<sup>t</sup> himselfe & Estate for three pounds twelue Shillings & Six pence in mony or Cordwood, to bee paide in Boston unto Tho: Dexter of Boston.

Execucion issued y<sup>e</sup> 6<sup>th</sup> 7<sup>br</sup> 72 for 3<sup>li</sup> 12<sup>s</sup> 6<sup>d</sup> mony or Cordwood. [37]



At a County Court held at Boston April y<sup>e</sup> 30<sup>th</sup> 1672.

Present

RI: BELLINGHAM Esq <sup>r</sup> Gov <sup>r</sup>	ELEAZ <sup>r</sup> LUSHER	} Esq <sup>rs</sup>
JO <sup>n</sup> LEVERETT Esq <sup>r</sup> dep <sup>t</sup>	EDW. TING	
	W <sup>m</sup> STOUGHTON	

Grand Jurie y<sup>e</sup> Same w<sup>th</sup> y<sup>e</sup> Last Court

Jurie of Trialls

Dan <sup>ll</sup> Cushine	W <sup>m</sup> Davis	James Nash
Jo <sup>n</sup> Oliuer	W <sup>m</sup> Bartholmew	Jo <sup>n</sup> Loring
Jo <sup>n</sup> Conney	Rob <sup>t</sup> Voss	Jo <sup>n</sup> Farrington
Jo <sup>n</sup> Vsher	Samm. Thompson	Jo <sup>n</sup> Turno <sup>r</sup>

Jo<sup>n</sup> Freacke, plan<sup>t</sup> ags<sup>t</sup> Edward Naylor defend<sup>t</sup> in an action of the Case for nonpayment of a debt of two hundred Sixty Seven pounds dew by bill dated the fifth of Decemb<sup>r</sup> 1671. & due damages according to Attachm<sup>t</sup> dated y<sup>e</sup> 11<sup>th</sup> Feb<sup>r</sup> 1671 . . . the Jurie . . . found for the plan<sup>t</sup> two hundred Sixty Seven-pounds mony according to bill & costs of Court w<sup>ch</sup> was thirty Seven Shillings & ten pence.

Execution issued y<sup>e</sup> 23<sup>th</sup> 3m<sup>o</sup> 72 for 268<sup>ll</sup> 17<sup>s</sup> 10<sup>d</sup>

[USHER v. NAYLOR]

Hezek<sup>a</sup> Vsher senio<sup>r</sup> plan<sup>t</sup> ags<sup>t</sup> Edw. Neylor Defend<sup>t</sup> in an action of debt of two hundred pounds or thereabouts dew by booke & due damages according to Attachment bearing date 11<sup>th</sup> Feb<sup>r</sup> 1671. The Action being cal'd & the Attachmen<sup>t</sup> read the plantiffe was nonsuited for not giving Summons to the Defendant.

ATWATER ags<sup>t</sup> NAYLOR

Joshua Atwater senio<sup>r</sup> plan<sup>t</sup> ags<sup>t</sup> Edw. Neylo<sup>r</sup> Defend<sup>t</sup> in an action of debt of thirty pounds in mony dew by bill & dew damages according to Attachm<sup>t</sup> dated y<sup>e</sup> 19<sup>th</sup> February 1671 . . . the Jurie . . . founde for the plantife Thirty pounds in mony & costs of Court w<sup>ch</sup> was 25<sup>s</sup> 2<sup>d</sup>.

HASTINGS ags<sup>t</sup> PARKS

Tho: Hastings of Watertowne, & Tho: Cheney of Roxberry plaints ags<sup>t</sup> Deacon W<sup>m</sup> Parks Defend<sup>t</sup> in an action of the case for Trespass done by pulling downe & carrying away part of a Stone wall that was

upon a peice of Land in Roxberry nere unto the great Lotts in possession of y<sup>e</sup> s<sup>d</sup> Thom. Cheny thereby claiming the Title of the s<sup>d</sup> Land & soe disturbing his peacable possession contrary to the Law possession w<sup>th</sup> all other due damages according to Attachment dated 29<sup>th</sup> March 72. Nonsuited

LIDGETT ags<sup>t</sup> SAMPSON

Peter Lidgett Attorney to Richard Pikeford plan<sup>t</sup> ags<sup>t</sup> the Goods or Estate of Francis Sampson of Nevis, in an Action of debt of one hundred pounds or thereabouts as Evidences may Appeare & all other due damages according to Attachm<sup>t</sup> dated 31<sup>th</sup> Janu<sup>r</sup> 1671. Nonsuited for non Appearance. [38]

ATWATER ags<sup>t</sup> WHETCOMB

Joshua Atwater plan<sup>t</sup> against James Whetcomb Defend<sup>t</sup> in an action of the case for non paiment of a bill of Exchange protested for the Neate quantity of Seven thousand four hundred pounds of merchantable Muscovado Seuger drawne vpon m<sup>r</sup> Joseph James of Barbados merchant with all due damages according to Attachm<sup>t</sup> dated the 12<sup>th</sup> 2<sup>mo</sup> 1672 . . . the Jurie . . . finde for the Defendant costs of Court.

CLARKE ags<sup>t</sup> NICHOLLS

Thomas Clarke, late of Plim<sup>o</sup> plain<sup>t</sup> against the Goods, Estate or Debt's of Jo<sup>n</sup> Nicholls Sone to Mordecai Nichols Late of Boston deceased in the hands of Jo<sup>n</sup> Wiswall senior<sup>r</sup> Guardian to the s<sup>d</sup> Jo<sup>n</sup> Nicholls Defend<sup>t</sup> In an action of review of an Action of the case of two hundred pounds commenced against the s<sup>d</sup> Tho: Clarke by the s<sup>d</sup> Jo<sup>n</sup> Wiswall guardian to the s<sup>d</sup> Jo<sup>n</sup> Nicholls at County Court held at Boston in July last for withholding an Estate left the s<sup>d</sup> Jo<sup>n</sup> Nicholls by his mother Alice Clarke by will w<sup>ch</sup> will was made according to Contract before her marriage w<sup>th</sup> the s<sup>d</sup> Thomas Clarke being formerly the estate of Mordecai Nicholls his Father deceased being for the most part an Estate of Movables & Debts by Vertue of w<sup>ch</sup> Action Judgm<sup>t</sup> was granted against y<sup>e</sup> s<sup>d</sup> Clarke that hee deliver all y<sup>e</sup> Estate now in his Custody or that hee hath any waies disposed of that did belong vnto his Late wife Alice, that was hers before her marriage w<sup>th</sup> him (Except what was disposed of by a form<sup>r</sup> Verdict) this to bee deliuered

to the plain<sup>t</sup> for the vse of Jo<sup>a</sup> Nicholls or two hundred pounds money damage & Costs of Court. Vpon w<sup>ch</sup> Judgm<sup>t</sup> Execution hath beene issued forth & leuied vpon the Estate of the s<sup>d</sup> Thomas Clarke absolutely for the Vallew of two hundred pounds in money, greatly to the Damage of the s<sup>d</sup> Clarke, in regard the aforesaide Action & Judgm<sup>t</sup> is altogether groundlesse & illegall, the before recited will being made not according to but absolutely contrary to the before mentioned Contract w<sup>ch</sup> Contract alsoe is voide & of none Effect w<sup>th</sup> other due damages according to Attachm<sup>t</sup> Dated y<sup>e</sup> 1<sup>d</sup> of April 1672 . . . the Jurie . . . founde for the Defendant Costs of Court w<sup>ch</sup> was twenty two Shillings & ten pence. [39] The Plain<sup>t</sup> Appealed from this Judgment to the next Court of Assistants & the s<sup>d</sup> Tho: Clarke in four hundred pounds & Jo<sup>a</sup> Freacke & Anthony Checkly in two hundred pounds apeice acknowledged themselues bound to . . . prosecute his Appeale . . .

[For the story of this case to date, see above, pp. 5-9. It appears from papers in S. F. 1404, that the Court of Assistants, on March 5, 1672/73, gave Thomas Clarke an execution on the house and land in question. Thomas Clarke, on June 18, 1673, conveyed the land with "livery and siezin" to his son Andrew Clarke. John Nicholls, nevertheless, sued him for 300*l* on the ground that the property was entailed to himself and that the judgment was "illegall and erronious." The house and land in controversy were apprized at 81*l* 0*s* 7*d* for which sum Andrew Clarke alleged that he offered to sell it to John Nicholls, during the trial; but the jury of the Suffolk County Court, in April, 1675, found for the plaintiff 400*l* against which judgment Andrew Clarke appealed to the Court of Assistants (S. F. 1404.4). John Nicholls' "answers to Andrew Clarkes reasons of appeal," which he asserts to be "nothing else but a clamorous cavilling and reflection on the former Jury who knew their own buisness near as well as the present plaintiff," are in S. F. 1404.3. The Court, in 1675, "found for the defendant Confirmation of the former Judgment" and costs 41*s* 6*d*. Records of the Court of Assistants, i. 47.]

CLARKE ags<sup>t</sup> BRIDGHAM

Tho: Clarke, Late of Plim<sup>o</sup> Plain<sup>t</sup> ags<sup>t</sup> M<sup>rs</sup> Elisabeth Bridgham widow & Relict to Henry Bridgeham Defend<sup>t</sup> in an Action of the case for unlawfully withholding & refusing to deliuer unto the s<sup>d</sup> Clarke a Summe of Money of his aboue forty pounds w<sup>ch</sup> she clandestinely received of Alice the Late wife of the s<sup>d</sup> Tho Clarke (without his knowl-

edge consent or Approbation) it being committed to her per the s<sup>d</sup> Alice who never had any power soe to doe w<sup>ch</sup> hath beene much to the Damage of the s<sup>d</sup> Clarke w<sup>th</sup> other due Damages according to Attachm<sup>t</sup> Dated y<sup>e</sup> 1<sup>d</sup> of April 1672 . . . the Jurie . . . found for the Defend<sup>t</sup> Costs of Court w<sup>ch</sup> was Thirteene Shillings & four pence.

[Another case involving the Clarke-Nicholls property. See preceding entry. The case is renewed at the July session, 1672. See below, pp. 131-3.]

#### HOLEBROOKE ags<sup>t</sup> LAKE

Thomas Holebrooke & Jo<sup>n</sup> Vineing Plaintiffs against Cap<sup>t</sup> Tho: Lake Defend<sup>t</sup> in an Action of Debt dew for Severall Boate Loads of Stones deliuered for his vse & by his orders to the vallew of twenty & one pound or thereabout of w<sup>ch</sup> a part paide as will more plainly Appear by the s<sup>d</sup> Cap<sup>t</sup> his Booke w<sup>th</sup> all due Damages according to Attachm<sup>t</sup> bearing date the 9<sup>th</sup> of April. 1672. The Plaintiffs withdrew their Action.

#### LEADS ag<sup>st</sup> RICHARDS

Beniamin Leads of Dorchester plaintiffe against Edw. Richards of Dedham Defend<sup>t</sup> in an Action of the case for illegall taking away of a Cow, marked w<sup>th</sup> a peice cut out of the und<sup>r</sup> side of the right ear & alsoe being big w<sup>th</sup> calfe w<sup>th</sup> due damages according to Attachment dated 22<sup>th</sup> 2<sup>mo</sup> 1672. both parties after the Action was called desired to come to the merit of the cause the Court consented unto it & after the Evidences in the case produced were read . . . the Jurie . . . found for the Defend<sup>t</sup> the cow in Controversy & Costs of Court w<sup>ch</sup> was three pounds Seven Shillings & four pence.

Execution issued y<sup>e</sup> 23<sup>th</sup> 3<sup>mo</sup> 72 for 3<sup>li</sup> 7<sup>s</sup> 4<sup>d</sup> costs. [40]

#### HUTCHINSON ags<sup>t</sup> BILL

Cap<sup>t</sup> Edward Hutchinson Plain<sup>t</sup> ags<sup>t</sup> James Bill Senio<sup>r</sup> of pulling point Defend<sup>t</sup> according to Attachm<sup>t</sup> The Plaintiffe withdrew his Action.

#### BOSEWORTH ags<sup>t</sup> MORSE

Sammuel Bosworth plain<sup>t</sup> ags<sup>t</sup> Jo<sup>n</sup> Morse Defend<sup>t</sup> in an Action of the case, for non paim<sup>t</sup> of two hundred pounds in lawfull money of New England due by one bond or Obligacion bearing date the 6<sup>th</sup> August 1669 w<sup>ch</sup> Bond is forfeited by the s<sup>d</sup> Morse his refusing to give



unto y<sup>e</sup> s<sup>d</sup> Boseworth a lawfull deede of Sale according to the Tenor of the condicion annexed unto the s<sup>d</sup> Bond of a house & Land therein mentioned Although the s<sup>d</sup> Boseworth brought & tendered unto the s<sup>d</sup> Morse one hundred & ten pounds of lawful money of New England w<sup>ch</sup> refusall of the s<sup>d</sup> Morse hath beene & is much to the damage of the s<sup>d</sup> Boseworth w<sup>th</sup> other due damages according to Attachm<sup>t</sup> dated y<sup>e</sup> 24<sup>th</sup> of April 1672 . . . the Jurie . . . founde for the Plaintiffe the forfeiture of the Bond & Costs of Court. The Defend<sup>t</sup> Appeals from the Sentence of this Court to the next Court of Assistants & accordingly Jo<sup>n</sup> Morse as Principle in two hundred pounds & Jo<sup>n</sup> Buttolph & James Meares as Sureties in one hundred pounds apeice acknowledged themselves bound to . . . prosecute his Appeale . . .

SAVAGE ags<sup>t</sup> DAVISON

Cap<sup>t</sup> Tho: Savage, plain<sup>t</sup> against Johanah Davison Relict & Executrix of Nicholas Davison deceased in an Action of Debt of Twenty Six pounds or thereabouts for two pipes of wine delivered unto her for the use of her husband w<sup>th</sup> other due damages According to Attachm<sup>t</sup> dated y<sup>e</sup> 12<sup>th</sup> of April 1672. This Action was non-suited.

HOPPINE ags<sup>t</sup> HAWKINS

Stephen Hoppine Plain<sup>t</sup> against W<sup>m</sup> Hawkins Defend<sup>t</sup> according to Attachm<sup>t</sup> dated y<sup>e</sup> 6<sup>th</sup> of April 1672. Non-suited upon non Appearance. [41]

THO: NORMAN ags<sup>t</sup> TAYLOR

Tho: Norman plain<sup>t</sup> against Caleb Tayler Defend<sup>t</sup> in an Action of Debt due by bill for the non paim<sup>t</sup> of Twenty Eight pounds in mony, and all dew damages according to Attachm<sup>t</sup> dated the 11<sup>th</sup> of April 1672 . . . the Jurie . . . founde for the plaintiffe twenty Eight pound in money according to Bill, and Costs of Court w<sup>ch</sup> was twenty Seven Shillings.

Execucion issued y<sup>e</sup> 7<sup>th</sup> 3<sup>mo</sup> 1672.

WOODMANCY ags<sup>t</sup> JOY

Jn<sup>o</sup> Woodmancy plain<sup>t</sup> against Tho: Joy Defend<sup>t</sup> according to Attachm<sup>t</sup> dated the 2<sup>d</sup> of February 1671. Non Suited upon non Appearance.

[ See above, p. 64, and below, p. 103.]

NEWCOMB ag<sup>st</sup> WAITE

Andrew Newcomb plain<sup>t</sup> against Richard Waite Marshall Defend<sup>t</sup> according to Attachm<sup>t</sup> dated y<sup>e</sup> 7<sup>th</sup> of April 1672. Non Suited.

COUCH ags<sup>t</sup> BAREFOOTE

Robert Couch, plain<sup>t</sup> against Walter Barefoote Defend<sup>t</sup> according to Attachm<sup>t</sup> dated the 14<sup>th</sup> of March 167 $\frac{3}{4}$ . Non Suited.

BAKER ags<sup>t</sup> MORSE

Stephen Baker plain<sup>t</sup> against Jo<sup>n</sup> Morse Defend<sup>t</sup> according to Attachm<sup>t</sup> dated the 24<sup>th</sup> day of April, 1672. Non Suited being Judged not Actionable.

HARRIS ags<sup>t</sup> EDSALL

Peter Goulding Attorney to Henry Harris plain<sup>t</sup> ags<sup>t</sup> Tho: Edsall Defend<sup>t</sup> according to Attachm<sup>t</sup> dated the 9<sup>th</sup> day of April 1672. Non suited vpon non appearance.

Execution issued y<sup>e</sup> 2 5<sup>m</sup> 72 for 8<sup>s</sup> 2<sup>d</sup> Costs.

[A "case depending between Henry Harris Appeal<sup>t</sup> and Thomas Edsall defendant" came up on September 3, 1672, in the Court of Assistants, which found "Reuersion of y<sup>e</sup> former Judgm<sup>t</sup> and ten pounds to bee paid According to Couenant and Costs of Courts." Records of the Court of Assistants, iii. 220, where writ of execution, dated September 10, 1672, for 12*l* 6*s* 7*d*, is also printed. Since Thomas Edsall produced neither money nor goods, he was committed to prison on September 17, 1672.]

PAINE ags<sup>t</sup> ATKINSON

Henry Paine plain<sup>t</sup> against Theodore Atkinson Senio<sup>r</sup> Defend<sup>t</sup> according to Attachm<sup>t</sup> dated the 4<sup>th</sup> of April 1672. pl<sup>t</sup> Non Suited upon Non Appearance.

DAVIS ags<sup>t</sup> MARTIN

Tobias Davis plain<sup>t</sup> against Samm. Martine Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated the 1<sup>th</sup> of the 12<sup>mo</sup> 1671. plain<sup>t</sup>. Non Suited upon non Appearance.

SHRIMPTON ags<sup>t</sup> BELCHOIR

Samm. Shrimpton plain<sup>t</sup> against Andrew Belchior Defend<sup>t</sup> in an Action of Debt of Twenty Six pounds Eleven Shillings & Six pence dew upon the ballance of acco<sup>t</sup> & other due damages according to

attachment dated 29<sup>th</sup> of April 1672 . . . the Jurie . . . founde for the plain<sup>t</sup> twenty Six pounds Eluen Shillings & Six pence in money & Costs of Court w<sup>ch</sup> was thirty Shillings & ten pence.

Execution issued the 19<sup>th</sup> of the 4<sup>mo</sup> 1672 for 28<sup>li</sup> 2<sup>s</sup> 4<sup>d</sup> [42]

PARKER ags<sup>t</sup> TURILL

Richard Parker plain<sup>t</sup> against Daniell Turill Defend<sup>t</sup> According to Attachm<sup>t</sup> dated the fue and twentieth day of April 1672.

This action was withdrawne.

[JOY v. WOODMANCY]

Tho: Joy, plain<sup>t</sup> against John Woodmancy Defend<sup>t</sup> According to Attachm<sup>t</sup> dated y<sup>e</sup> 16<sup>th</sup> April 1672.

This action is continued till next Court.

Tho: Joy Plain<sup>t</sup> against Jo<sup>n</sup> Woodmancy Defend<sup>t</sup> According to Attachm<sup>t</sup> dated y<sup>e</sup> 16<sup>th</sup> April 1672.

This Action was continued till next Court.

[See p. 145.]

MICHELSON ags<sup>t</sup> BROWNE

Marshall Edw: Michelson plain<sup>t</sup> against Samm. Browne Defend<sup>t</sup> who by Spetiall Appointm<sup>t</sup> & order of the Court of Assistants was required to Sequester, & take into his possession all the Estate of Edw. Nailor, w<sup>ch</sup> came by his wife or otherwise as by that order more fully Appears, & finding the s<sup>d</sup> Browne in possession of a house belonging to that Estate, & and demanding of him the Rent dew for his dwelling in the s<sup>d</sup> house, as alsoe possession of the s<sup>d</sup> house, and hee refusing to doe either, doe now bring this Action against s<sup>d</sup> Browne for withholding possession of s<sup>d</sup> house, & alsoe his Rent, w<sup>th</sup> all other due damages According to Attachm<sup>t</sup> dated April the 29<sup>th</sup> 1672 . . . the Jurie . . . founde for the plain<sup>t</sup> possession of the house the s<sup>d</sup> Browne now liues in w<sup>th</sup> with what Rent shall Appeare dew & Costs of Court.

Execution issued y<sup>e</sup> 8 3<sup>mo</sup> 1672.

ATKINSON ags<sup>t</sup> TOD

Theodore Atkinson Senior plain<sup>t</sup> against John Tod Defend<sup>t</sup> in an Action of debt of about two hundred & eight pound ten shillings, fue pence due upon Acco<sup>t</sup> as by booke doth appear, part whereof is to-

bee paide in Merchantable Fish, & part in wheate & flower & all just damages according to attachm<sup>t</sup> dated, 23<sup>th</sup> April 1672 . . . the Jurie [43] . . . founde for the Defend<sup>t</sup> Costs of Court w<sup>ch</sup> was fifty one shillings & two pence.

ATKINSON ags<sup>t</sup> JEWETT

Theodore Atkinson Senio<sup>r</sup> Plain<sup>t</sup> against Joseph Jewetts Executors Defend<sup>ts</sup> According to attachm<sup>t</sup> dated y<sup>e</sup> 23<sup>d</sup> of April 1672. pl<sup>t</sup> Non Suited, & costs granted the Defend<sup>ts</sup> thirty eight shillings & eleven pence.

Execucion issued 4: 6: 74.

CLARKE, &c: ags<sup>t</sup> SHAPLEIGH

Cap<sup>t</sup> Tho: Clarke & Cap<sup>t</sup> W<sup>m</sup> Davis Administrato<sup>rs</sup> to the Estate of the Late Valentine Hill deceased, Plain<sup>ts</sup> against Majo<sup>r</sup> Nicholas Shapleigh Defend<sup>t</sup> in an Action of the case for the forfeiture of a Bond of three hundred pounds for non paim<sup>t</sup> of a debt of two hundred Quentalls of Merchantable Fish w<sup>th</sup> due damages according to Attachm<sup>t</sup> Dated the 9<sup>th</sup> day of April 1672. . . . The Jurie . . . founde for the plain<sup>ts</sup> the forfeiture of the Bond & Costs of Court w<sup>ch</sup> was thirty six shillings & four pence.

FREAKE ags<sup>t</sup> NAYLOR

John Freacke, Plain<sup>t</sup> against Edw. Neylor Defend<sup>t</sup> according to Attachm<sup>t</sup> dated the 17<sup>th</sup> day of February 1671. The Plain<sup>t</sup> withdrew his Action.

EDSALL ags<sup>t</sup> TRAVIS

Tho: Edsall, plain<sup>t</sup> against Richard Travis defendt. in an Action of Review of a Case tryed at a Court in April 1667 for holding possession & emproving of a Shop, chamb<sup>r</sup> w<sup>th</sup> garrett & a yard amounting to Summe of about six pounds ten shillings per yeare (or upwards) for two year & three quarters &c & not paying his due Rent nor repairing that part of the s<sup>d</sup> house according to M<sup>rs</sup> Hanifordes Contract by w<sup>ch</sup> the s<sup>d</sup> Edsall is much damnified w<sup>th</sup> other due damages according to Attachm<sup>t</sup> Dated April 24. 1672 . . . the Jurie . . . finde for the Defend<sup>t</sup> Costs of Court w<sup>ch</sup> was Sixteen Shillings & Eight pence.

Execution issued y<sup>e</sup> 19<sup>th</sup> 4<sup>mo</sup> 1672.



[ The dispute arose in part because Travis was his landlord's tailor, the following deposition and accounts, from 1143.5, 4, being cited in evidence:

James Duevell aged 64 yeares or thereabouts testifieth that he was with m<sup>rs</sup> Hanniford when she let her house to m<sup>r</sup> Edsell for one yeare, & that she would not let the said Edsell her house, unless he would undertake for the whole rent, and take Goodman Trauis tennant to him, and m<sup>r</sup> Edsell said he would pay her the rent and take Goodman Travis to be his tennant, for goodman Travis was in part of the house hee had hired of m<sup>rs</sup> Hanniford some weekes before and further saith not.

Deposed in Court the 1<sup>st</sup> of May 1667. Edw Rawson Recorder

1664	Thomas Eds[all] debtor vnto Richard Travis	<i>l s d</i>
Apr 24	By you left pay your mens Coates . . . . .	00:04:06
	It for mending your wastcoats . . . . .	00:00:06
July 9	It paid to Robert Moby by your order . . . . .	00:05:06
12	It in money to your selfe . . . . .	00:07:06
16	It makeing your wastcoate & silke . . . . .	00:02:03
24	It makeing your drawers & tape & thred . . . . .	00:03:06
Oct 6	It for makeing your Coate & silke thred & gallo[n]e . . . . .	00:06:02
16	It in money to your selfe . . . . .	00:00:04
21	It in tape & thred . . . . .	00:01:00
9ber: 9:	It in money . . . . .	00:00:06
	It in money . . . . .	00:01:10
	It in money . . . . .	00:05:06
	It by sixty pounds of fish . . . . .	00:05:00
1665	It for altering your buff dublet . . . . .	00:05:00
Apr 12	It 1 bushell of wheate . . . . .	00:05:00
	It in money . . . . .	00:01:00
	It by one bushell of wheate . . . . .	00:05:00
May: 1:	It for makeing your daughter Sarah <sup>s</sup> Suite & triming . . . . .	00:05:00
12	It in money . . . . .	00:10:00
	It twee Bushels of wheate . . . . .	00:10:00
	It in money . . . . .	00:04:00
June: 4:	It paid him by John Johnson on accompt . . . . .	00:08:00
	It paid Benjamin Whitmore by your order . . . . .	00:16:06
	It for makeing your coate silke & thred . . . . .	00:06:06
July: 5:	It for makeing your Boy Aaron his drawers . . . . .	00:00:09
	It making 2 payer of drawers tape & thred . . . . .	00:03:04
	It for makeing your man Henerys wastcote . . . . .	00:02:00
	It in money . . . . .	00:01:00
	It in money when you went for the cattle . . . . .	00:02:00
	It in money & a baile for a paile . . . . .	00:12:06
	It for makeing twee shirts . . . . .	00:01:00
	It for makeing your wastcote silke & thred . . . . .	00:02:00
	It by washing . . . . .	01:10:00
	It in money . . . . .	00:15:01
	It for making a shirt and drawers for man that dwelleth with m <sup>r</sup> Endicott . . . . .	00:01:00
	per contra credit <sup>r</sup> 9l—12s—3d	09:14:00

[reverse]

Per Contra is Credito<sup>r</sup>

By rent begining on the 15<sup>th</sup> day of Aprill 1664 and ending on the  
 29 day of July 1666 being in all twoe yeares one quarter and  
 twoe weekes at fower pounds per yeare coms vnto in all . . 09:04:00

This was sworn to by Travis as a just and true account, and attested  
 as a true copy.

Following this decision, Travis sued Edsall before a Commissioners Court at Boston, for 10s overpayment of rent. This court decided against Travis, June 18, 1672, from which judgment his attorney, Peter Goulding, appealed (S. F. 1143.2), citing as evidence of overpayment the above account and deposition. A writ of execution, dated September 10, 1672, on Travis's behalf against Edsall's estate for 2l 14s 4d is printed in Records of the Court of Assistants, iii. 221.]

CALLICOTT ags<sup>t</sup> TOMLIN

Richard Callicott Attorney to Jo<sup>n</sup> Bundy Plain<sup>t</sup> against John Tomlin Defend<sup>t</sup> according to Attachment. Noe plaintiffe appearing the case was non suited & 3<sup>s</sup> 4<sup>d</sup> Costs granted the Defend<sup>t</sup>. [44]

TING ags<sup>t</sup> DAVIS

Edw: Ting Esq<sup>r</sup> Plaintiffe against Tho Davis Defend<sup>t</sup> in an Action of the case for withholding a Debt of Twenty Seven pounds three Shillings due by bill dated 23 2<sup>mo</sup> 1667 together w<sup>th</sup> all dew damages According to Attachm<sup>t</sup> dated 22 2<sup>mo</sup> 1672. . . . The Jurie . . . found for the Plaintiffe Seventeen pounds one Shilling Eleven pence in Specie according to Bill & Costs of Court w<sup>ch</sup> was twenty Eight Shillings one penny.

Execution issued 17<sup>th</sup> 4<sup>mo</sup> 72 for 18<sup>li</sup> 10<sup>s</sup> 0<sup>d</sup>

KELLOND ags<sup>t</sup> HUDSON

Tho: Kellond, Plain<sup>t</sup> against Cap<sup>t</sup> W<sup>m</sup> Hudson Defend<sup>t</sup> in an Action of the case for the Summe of one hundred pounds in mony due to s<sup>d</sup> Kellond for that the s<sup>d</sup> Hudson hath not performed an Award made by Cap<sup>t</sup> Edward Hutchinson & M<sup>r</sup> Ephraim Turnor bearing date March 30<sup>th</sup> 1671, nor made paiment according to the Articles thereof the s<sup>d</sup> Hudson being bound thereunto in the Summe of one hundred pounds by Exchange of one Shilling between him & s<sup>d</sup> Kellond w<sup>th</sup>

other due damages according to Attachm<sup>t</sup> dated April y<sup>e</sup> 24<sup>th</sup> 1672 . . . the Jurie . . . founde for the Defend<sup>t</sup> Costs of Court & the reason they gave was they finde but one witness.

RICHARDS ags<sup>t</sup> BRACKETT

Jo<sup>n</sup> Richards, Plain<sup>t</sup> against Peter Brackett Defend<sup>t</sup> in an Action of the case for withholding y<sup>e</sup> Summe of fourscore pounds currant mony of New England due by Bond for that the s<sup>d</sup> Brackett hath not performed an Award made by Cap<sup>t</sup> Tho: Clarke M<sup>r</sup> Jo<sup>n</sup> Wiswall & M<sup>r</sup> Peter Lidgett bearing date 24<sup>th</sup> 4<sup>mo</sup> 1669 nor made paiement according to the same w<sup>th</sup> dew damages according to Attachm<sup>t</sup> dated y<sup>e</sup> 25<sup>th</sup> April 1672. After the Attachm<sup>t</sup> & Evidences in the case produced were read committed to the Jurie & are on file w<sup>th</sup> the Records of this Court the Jurie brought in their Verdict & founde for the Plain<sup>t</sup> the forfeiture of the Bond & Cost's of Court being 43<sup>s</sup> 2<sup>d</sup>. [45]

PATTEN ags<sup>t</sup> PATTEN

Justine Patten Administratrix to the Estate of Nathaniell Patten her late husband, Plain<sup>t</sup> against Thomas Patten Defend<sup>t</sup> in an Action of the case for a just & true Acco<sup>t</sup> of all his trans Actions as hee was an Attorney unto the s<sup>d</sup> Nathaniell Patten, & for all monys, Goods, Bills & Bonds w<sup>ch</sup> hee hath received or that have come into his hands any way Appertaining unto that Estate w<sup>th</sup> other due damages According to Attachm<sup>t</sup> dated 23 1<sup>mo</sup> 167<sup>1</sup>/<sub>2</sub> . . . the Jurie . . . finde for the Plaintiffe, that the Defend<sup>t</sup> render to the Plaintiffe a just & true acco<sup>t</sup> of what he did Transact by vertue of the Letter of Attourny from his Late Vncle Nathaniell Patten & of all monys, Goods, Bills & bonds w<sup>ch</sup> hee hath received, or that hath any ways come into his hands any way Appertaining to that Estate, this to bee done within Six weeks to the Satisfaction of this Court, or to pay Six hundred pounds in money & Costs of Court. w<sup>ch</sup> was three pounds, fue Shillings & ten pence.

[See above, pp. 80, 93, 95, below, pp. 110, 125.]

HAWKIN'S bond for appea<sup>r</sup> & good behavior

W<sup>m</sup> Hawkins presented by the Grand Jurie, for being principally Instrumentall & privately conveying away in the night Hannah Hoppine without her friends consent who is reported to bee w<sup>th</sup> Childe.

the case being committed to the Jurie they brought in their Verdict. they finde that the s<sup>d</sup> W<sup>m</sup> Hawkins hath beene Intrumentall in conveying Hannah Hoppine out of the Country w<sup>th</sup>out her friends consent. The Court considering that the case of W<sup>m</sup> Hawkins relates to a person that is at soe great a distance being Sent to Barbados who may thereby bee greatly injured the Court refers it to the next Court of this County. & in the meane time the s<sup>d</sup> W<sup>m</sup> Hawkins to bee bound to the good Behavior in one hundred pounds principle to Appear as before & accordingly W<sup>m</sup> Hawkins as principle in one hundred pounds & Jo<sup>n</sup> Freake & Cap<sup>t</sup> Samm. Scarlett as Sureties in fifty pounds apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that W<sup>m</sup> Hawkins shall appear at the next Court of this County & abide the Sentance of the Court & not depart without Licence & in time bee of good behavior.

[ See above, p. 101.]

#### JENKINS discharged of Adminstracion

The Court orders that the Estate that is left of Joseph [46] Whetstone shalbee divided amongst the Children the Eldest Sone to haue a double portion & Edw. Jenkins to bee discharged.

#### Ord<sup>r</sup> about BADCOCKS Estate

Robert Tucker, Sergeant W<sup>m</sup> Blake & Leiv<sup>t</sup> Quinzy are ordered & appointed by this Court to Apprize the Estate of the Late George Badcock of Milton & make return thereof to this Court.

#### Ord<sup>r</sup> about PASCOA

John Pascoa a weavor complained of by the Selectmen of this Towne for imposing himselfe upon the Towne without their consent & having a wife in England the Court ordered him to goe to his wife by the first opportunity or pay twenty pounds according to Law.

#### BADCOCKS liberty to bring in new Inven<sup>t</sup>

The Court orders Mary Badcock widow haue Liberty to hand a new Aprizall of the Estate of her Late Husband noe Inventory being yet vpon Oath brought in.



Ord<sup>r</sup> to ROCKE

Vpon complainte made by the Guardians of the Late Thomas Robinsons Children to this Court of the backwardness & unwillingness of M<sup>r</sup> Joseph Rocke to giue or come to an Acco<sup>t</sup> w<sup>th</sup> s<sup>d</sup> Guardians, the Court ordered that the Clarke signify to him theire pleasure to giue him & s<sup>d</sup> Guardians a hearing this day after dinn<sup>r</sup>.

[ See Stoddard v. Rock, below, pp. 217, 241, 466, 493.]

Ord<sup>r</sup> to LATTIMORE

Vpon the petition of Jo<sup>n</sup> Bundy to this Court tis Ordered that X<sup>p</sup>her Lattimore (having put in a caution against s<sup>d</sup> Bundy's Administracion formerly) that hee appeare forthw<sup>th</sup> in Court to giue in his Reasons of the afores<sup>d</sup> Caveat.

## Auditt [ATKINSON v. TODD].

The Court Appoints Cap<sup>t</sup> Edw. Hutchinson & M<sup>r</sup> Jo<sup>n</sup> Howard to Auditt the Acco<sup>ts</sup> betwixt Theodore Atkinson Senio<sup>r</sup> & Jo<sup>n</sup> Tod & make Returne thereof to this Court.

LORINES Administ<sup>r</sup> Bond

M<sup>rs</sup> Jane Lorine, & Thom. Lorine & Jo<sup>n</sup> Lorine her Sonnes acknowledged themselues jointly & Severally bound to the Treasuro<sup>r</sup> of the County of Suffolke in the Summe of Sixteene hundred pounds, on condicion that they shall Administer vpon the Estate of M<sup>r</sup> Thom. Lorine her Late husband and their Father & bee accomptable to this Court when called for.

M<sup>r</sup> Josiah Flinte tooke the Oath of Freedom of this Colony, 1. 3<sup>mo</sup> 1672.

## PATTEN'S Bond for Administracion

W<sup>m</sup> Staughton Esq<sup>r</sup> Cap<sup>t</sup> Hopestill Foster & Jo<sup>n</sup> Garnitt acknowledged themselues bound to the Treasuro<sup>r</sup> of the County of Suffolke in the Summe of two thousand pounds, on condicion that M<sup>rs</sup> Justine Patten shall Administer vpon the Estate of her Late husband M<sup>r</sup> Nathaniell Patten according to Law & bee accomptable to the Court of this County w<sup>n</sup> called for.

[47] The Court orders & Appoints W<sup>m</sup> Staughton Esq<sup>r</sup> to take the Oath of M<sup>rs</sup> Justine Patten to the Inventory of M<sup>r</sup> Nathaniell Patten her late husband.

[ See above, pp. 81, 93, 95, 107, and consult Index.]

#### SHRIMPTON'S Bond to the Keeper

Samm: Shrimpton Appeared in Court & acknowledged himself bound to the Keeper of the Prison in Boston in the Summe of two hundred pounds & forty on condicion that Thomas Norman shalbee & Returne a true prison<sup>r</sup> to him the s<sup>d</sup> Keeper when at any time hee shall goe to attend the publique worship of God at any of the Meeting houses in this Towne, either on Sabbath or Lecture dayes, And the Keeper hath hereby Liberty from this Court to Suffer him to goe as abouesaid.

Hull Towne p<sup>r</sup>sent.

The Towne of Hull p<sup>r</sup>sented for insufficiency of there pound Nathaniell Bozward made answ<sup>r</sup> it was mended.

#### CHAMBERLAIN'S Present

W<sup>m</sup> Chamberlaine Sen<sup>r</sup> of Hull & W<sup>m</sup> Chamberlaine Jun<sup>r</sup> presented for Absenting themselues from the Publique Worship, they appeared not & the Court Ordered a Spetiall Warrant to bee issued out for them against y<sup>e</sup> next Court.

#### WHETCOMB'S discharg.

James Whetcomb acquainting the Court that Williams Anderson a Taylor for whome hee was Surety was departed. The Court ordered that if soe that hee is gone his & his Sureties bond is declared Null.

#### DOILY & WINTER'S disch.

Vpon due Proclamacion made, Jo<sup>n</sup> Doyly & Tim<sup>o</sup> Winter were discharged from theire Bonds of good Behavior.

#### Boston present<sup>d</sup>

The Towne of Boston presented for Insufficiency of the highway betwixt the house of Richard Bennett & M<sup>r</sup> Snelling the Presentm<sup>t</sup> not being proved fell.

The Towne of Boston Presented for not Attending the Law in providing measures for theire Towne Standards. The presentment was not proved & soe fell.

#### COLEBORN'S dismision

Nathaniell Coleborne of Dedham is by Order of this Court dismissed from Ordinary Trainings, paying Six Shillings per Annum in Mony to the Clarke of the Company.

Nathaniell Bosworth of Hull acquainting this Court of the occasion of his being disappointed of bringing the Votes to the Meeting of the Commission<sup>rs</sup> of the Severall Townes of this County for the Nomination of Magistrates. The Court accepted of his Answere. [48]

#### Discharges of Bonds

Thom: Grant was vpon due Proclamacion discharged of the Bonds hee gaue for the Peace.

Elizabeth Arnold Vpon due Proclamacion was discharged of her Bonds of good Behavior.

W<sup>m</sup> Carpenter was alsoe discharged on like Proclamacion.

Cornelius White was alsoe discharged on due Proclamacion.

Jo<sup>n</sup> Hurd Jun<sup>r</sup> was alsoe discharged on due Proclamacion.

Samm. Browne was alsoe discharged on due Proclamacion.

#### Culler of Fish

Francis Hudson Sworne Culler of Fish for the yeare Ensuing.

#### CHICKE to BROUGHTON

Thom: Chicke Appeared in Court & Acknowledged a Judgm<sup>t</sup> against himselfe & Estate for twelue pounds thirteene shillings in Deale Boards or any currant pay at Piscataqua at price currant, Vnto George Broughton of Boston & hee acknowledged it was in full of all Acco<sup>ts</sup> betwixt them.

Execution issued y<sup>e</sup> 28 3<sup>mo</sup> 1672.

#### WHITING'S fine halfe Remitted

Vpon the humble Peticion of James Whiting of Hingham the Court was pleased to Remit halfe the fine imposed upon him by the Worshipfull Edw. Ting Esq<sup>r</sup> for Selling Liquors without Licence according to Presentm<sup>t</sup> Last Court.

## WEBBS fine halfe Remitted

Vpon the humble Peticion of X<sup>o</sup>pher Webb the Court Remits halfe of his fine & freed him from his Bonds of good Behavior on due proclamacion made.

## HURD's bond Pardoned

The Court was pleased to Remit & pardon the forfeited Bond of five pound paide by Goodwife Hurd for her husband, ordering the Treasuro<sup>r</sup> to Repay it her againe.

## CHANDLOR Sentanced

Henry Chandelor, convicted of Severall pilfring & felonious Crimes which he confes't & were proved against him in Court. The Court Sentances him to pay to Andrew Belchior Sen<sup>r</sup> of Cambridge twenty four Shillings Returning his Cup againe to Jo<sup>n</sup> Turnor twenty four Shillings in Like mony & his Cup againe to John Carthew five pounds two Shillings in money & his goods againe to Jo<sup>n</sup> Skeats thirty two Shillings in money & his goods againe, to Francis Coward eight shillings & his drawers againe, to Phillip French five pounds one Shilling in money & his goods againe, to Tremble Gridly forty Shillings in mony & his goods againe to Rebecca Halsey forty Shillings in mony & her goods againe [49] to Jo<sup>n</sup> Freacke ten Shillings in Mony & his Booke againe & to Caleb Taylor Thirteene pounds two Shillings & four pence in mony & his goods againe & that hee shalbee whip't with Twenty Stripes severely Laide on & pay fees of Court & prison Standing committed till the Sentence be performed.

## JAMES an Indian Sentanced

James an Indian convicted of breaking into Benj<sup>a</sup> Scotts house of Brantery & there drinking & Spilling neere a Bar<sup>n</sup> of Sider. The Court Sentanced him to be whip't w<sup>th</sup> Thirty Stripes & to pay three-fold damage & charge of witnesses Thirty two Shillings. & fees of Court & Prison Standing committed till the Sentence bee performed.

## GROSS sentanced

Isaac Gross convicted of severall abusive Speeches to Thom. Maxwell reflecting on his State of Church Membership as alsoe of breaking the Peace in Striking & drawing bloode from a Baker &



severall other disorderly carriages as by Evidence Appeares hee alsoe being under Bonds of good behavior. The Court duely considering his Offences declare his & his Sureties bond forfeited & Sentances him to bee whip't w<sup>th</sup> Twenty Stripes or pay ten pounds in money fine to the County & fees of Court & to finde Sureties & put in Bond for his better behavior to bee imprisoned till the Sentence bee performed, & accordingly the saide Isaac Gross as principle in twenty pounds & Edward Porter & Thom. Edsall as Sureties in ten pounds apeice acknowledge themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Isaac Gross shalbee of better behavior & Appear at the next Court of this County.

#### Court Order concern. JOHN HURD

The Court Orders that w<sup>n</sup> Jo<sup>n</sup> Hurd Sen<sup>r</sup> come to Towne hee bee called to Acco<sup>t</sup> & proceeded with according to Law.

#### WARRO Sentanced

Silvanus Warro convicted for Stealing mony from his master Deacon W<sup>m</sup> Parks having a false Key to his Box hee owned the fact. The Court Sentanced him to pay twenty pounds in Mony to Deacon W<sup>m</sup> Parks the mony returned to bee part & to bee whip't with twenty Stripes paying fees of Court & Prison Standing committed till the Sentence bee performed.

The Court taking into consideracion the Bastard Childe born at Roxberry begotten by the saide Silvanus. [50] They Order that the saide Silvanus Warro make provicion in paying two shillings six pence per week for its maintenance to save the Towne of Roxberry harmeless from the chardge of that Childe & in case of failor therein hee the saide Silvanus is to bee sold to the Effect abouesaide by his s<sup>d</sup> master & the Select men of s<sup>d</sup> Towne of Roxberry & in case of disagreeem<sup>t</sup> the Marshall is to bee joined w<sup>th</sup> them.

[Warro, a negro slave, had been punished in 1668 for running away with his master's horse, S. F. 1109.2.]

#### KNIGHT Sentanced

Gillian Knight convicted for Enticing Dan<sup>ll</sup> Herring to her house & there Embracing him pick't his pocket and Stole Seven Shillings

from him, the Fact was proved & The Court Sentanced her to pay the s<sup>d</sup> Daniell Herring twenty one Shillings in mony & that Shee bee whip't with ten Stripes paiing fees of Court Standing Committed till y<sup>e</sup> Sentence bee performed.

#### CARWITHEE Sentanc'd

Francis Carwithee alias Rolph convicted for Selling Ale at 3<sup>d</sup> per quart & without Licence, she owned the fact & craved the Court's favor who Sentanced her to pay five pounds fine in mony to the County & fees of Court Standing comitmted till the Sentence bee performed. Vpon her humble Peticion they were pleased to Remit halfe the abouesaide fine.

#### HARWOOD Sentanc'd

Henry Harwood convicted for abusing & beating his wife who was great with Childe, The Court Sentanced him to bee whip't with ten Stripes or pay five pounds in mony fine to the County & fees of Court Standing committed till the Sentence bee performed.

#### COLLICOTT Sentanced

Preserv'd Collicott & Deborah his wife bound over to this Court to Answere for theire committing fornicacion before marriage. The Court Sentances them to pay forty Shillings apeice fine to the County & fees of Court or to bee whip't with ten stripes apeice Standing committed till the Sentence bee performed.

#### READE sentenced

Phillip Reade of Concord presented for Swearing and cursing, the presentment not being fully proved though not without Strong Suspicion of his being guilty the Court Sentenced him to bee Admonished & pay fees of Court.

[ Philip Read, physician of Concord, was accused by his mother-in-law of uttering blasphemy. This was a very serious matter for which the penalty in the Bay jurisdiction was death. Thomas Danforth, assistant and magistrate, issued on July 5, 1671, a warrant "in his Majesties name" to the Constable of Concord "to apprehend the body of Philip Read, & bring him forthwith before mee at my house in Cambr. to answ<sup>r</sup> for

some cursed & blasphemous words by him vttered to y<sup>e</sup> reproach of y<sup>e</sup> name of y<sup>e</sup> liveing Lord God," and to bring with him the wife of Richard Rice (S. F. 1052.1). On the back is the return by John Grundy and Moses Wheat, constables, declaring the parties to have been apprehended and to be brought "befour your worsheph this sixth of July 71." Before the magistrate, Read admitted "that the name of Christ was mentioned," but denied having uttered blasphemy, and Elizabeth Rice would say nothing; nevertheless Thomas Danforth committed Read to Cambridge prison "being accused of curseing & blasphemy (in a dreadfull & high-handed mann<sup>r</sup>) the name of the liveing God. You are to keep him safe untill he be orderly discharged, & in so doeing this shall be yo<sup>r</sup> warrant. dat. 6. 5. 1671." By warrant dated July 12, 1671, to the keeper of the prison in Boston, signed by Danforth and Richard Russell, Read was transferred to Boston jail. The indictment (S. F. 1052.9) follows:

Wee The Grand Jury for ou<sup>r</sup> Soueraigne Lord the king doe Indict Phillip Read of Concord Chirurgion or practitione<sup>r</sup> in Phisick: for not having the feare of God before his eyes & being Instigated by the divill did sometime in may last Blaspheme the holy name of christ & also on a motion then & there made to pray to God for his wife then sick blasphemously Cursed bidding the Divill take yo<sup>w</sup> & yo<sup>r</sup> praye<sup>rs</sup>. Contrary to the peace of our Soueraigne Lord the king his Crowne & dignity the lawes of God & of this Land title Blasphemy, doe find this to be a true bill. James Euerell fore man

Boston this 5<sup>th</sup> 7<sup>ber</sup> 1671

One of the several depositions in the case (S. F. 1052.7):

Susanna Gleison aged ab<sup>t</sup> 55 yeares, being Sworne do say, that Sometime ab<sup>t</sup> may last, Shee being present at y<sup>e</sup> house of Philip Read at Concord, whose wife was y<sup>n</sup> weak & neer death (as her friends thought) her mother mentioneing y<sup>e</sup> name of ch<sup>t</sup> Hee y<sup>e</sup> Said Read replied, y<sup>e</sup> Devill take you & yo<sup>r</sup> ch<sup>t</sup> and a motion being made of praying to God for her He said y<sup>e</sup> Divel take you & yo<sup>r</sup> praye<sup>rs</sup>. And y<sup>e</sup> wife of David fisk Soone after comeing in, this depon<sup>t</sup> took occasion to manifest her trouble at y<sup>e</sup> s<sup>d</sup> Read, for his evill speaking Whereupon his mother in law Goody Rice replied he blasphemed he blasphemed. And after this y<sup>e</sup> Said Read comeing to y<sup>e</sup> house of this Depon<sup>t</sup> shee told him of his curseing & evill speaking, to w<sup>ch</sup> he replied, excusing his rage y<sup>t</sup> he was then: — Saying y<sup>t</sup> The woman (his mother in law) had made him mad, and Said the Devill take her for shee had brought him to [     ]

Her  
Susanna X Gleison  
Mark

Philip Read denied this; and William Gleason, Elizabeth Rice, and Benjamin Russell, who were present on the occasion of Read meeting his mother-in-law, declared that they heard not the alleged words (S. F. 1052.4-6, 8).]

## GEORGES licence

On Certificate from the Select men of Dorchester Nicholas George had his Licence renewed to keepe an Ordinary, & the s<sup>d</sup> Nicholas George as principall in ten pounds & Samm. Paul & Samm. Minott [51] as Sureties in five pounds apeice Acknowledged themselues bound . . .

## JACOBS licence

On like Certificate from the Selectmen of Hingham, Jo<sup>n</sup> Jacobs had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> for the yeare Ensuing and Ensgine Jo<sup>n</sup> Thaxter in ten pounds & Cap<sup>t</sup> James Oliver & Lieu<sup>t</sup> Richard Woody in five pounds apeice Acknowledged themselues bound . . .

## DANIELLS licence

On Like Certificate from the Select men of Milton, W<sup>m</sup> Daniell had Like Liberty to Sell wine Beire & Liquors to keepe a house of publique Entertainment for the yeare ensuing. & the s<sup>d</sup> W<sup>m</sup> Daniell as principle in ten pounds & Robert Voss of Milton & John Keine of Boston in five pound apeice as Sureties Acknowledged themselues bound . . .

## THORNE Presented

Mary Thorne presented for Abusing and Striking her husband the presentm<sup>t</sup> not being fully proved The Court Sentanced her to bee cautioned.

## EDWARDS Sentanc'd

Vrsula the wife of Henry Edwards presented for striking her husband & abusiue Carriage & Language the presentment was Owned & she was Sentanced to be whipt w<sup>th</sup> ten Stripes or pay twenty Shillings fine in money to the County & fees of Court Standing committed till the Sentence bee performed.

BENDALL Present<sup>d</sup>

Free Grace Bendall, presented for suffering his wrack to lye in the Roade way which Endangers Vessells going out & comming in, The Presentm<sup>t</sup> was Owned & the Court Sentanced him to remove the s<sup>d</sup> wrack within a fortnight on penalty of five pounds in money fine to the County & to bee Liable to pay all Damages that come to any thereby.



## PARKS Presented

Deacon William Parks presented for doing & consenting to such Actions on the Sabbath day as Seeme not Suitable to bee done upon the Sabbath, in the transportacion of Eliz<sup>a</sup> Parker from his one house [52] To Goodman Kibbies house beyond Muddy River The Court on due Examination of the Presentm<sup>t</sup> found that in the fact there was noe cause of presentm<sup>t</sup> & soe hee was Acquitted.

Abraham How presented for the like was also Acquitted.

## RICHARDSON &amp; READS Petition

In answer to the Petition of Jeffery Richardson & W<sup>m</sup> Reade, The Court Orders that the Petitioners bee Sent to the quarries at Charles Towne & what they Earne above their Maintenance is to pay their Creditors proportionably.

MURPHEY Present<sup>d</sup>

The wife of Brian Murphey presented for Suspicion of Stealing, by breaking Fence & carrying it into her house, She Appeared in Court & owned that she carried some broken Fence home, but that she brake it not & noe sufficient prooffe comming in the Court discharged her.

LIDGETT &<sup>e</sup> Present<sup>d</sup>

Peter Lidgett Richard Wharton & Jo<sup>n</sup> Vsher presented for Buying Raw Hides contrary to Law p. 49. Sect. 2. & p. 37. Sect. 1. the Presentm<sup>t</sup> not being proved they were discharged.

[ The references are to The Book of the General Lawes and Libertyes of 1660. Sec. 2 on page 49 forbids anyone to sell hides insufficiently tanned or treated with “unkind heates” or “warne woozes.” This was a part of the English Assize of Leather, adopted by the General Court in 1642 in order to protect the consumer from inferior quality, and to protect tanners from unfair competition. Sec. 1 on page 37 forbids the delivery on board ship of raw hides, skins, or pelts, “with the intent to have the same transported out of this Iurisdiction.” This was a part of the mercantilist legislation of the Bay, the intent being to keep raw materials at home where working them up into finished goods would provide employment.]

GILLAM Present<sup>d</sup>

Anne Gillam Sen<sup>r</sup> presented for absenting her Selfe from the Publique worship of God upon the Lord's Dayes The Presentm<sup>t</sup> not being proved & soe fell.

## GROSS Presented

Mathew Gross of Boston presented for Selling Beere without Licence contrary to Law. The presentment not being proved fell.  
The Court Adjourned till y<sup>e</sup> 13<sup>th</sup> June next.

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Boston 9<sup>th</sup> 3<sup>mo</sup> 1672.

Present Jo<sup>n</sup> LEVERETT Esq<sup>r</sup> Dp<sup>t</sup> Gov<sup>r</sup> EDW. TING Esq<sup>r</sup>.

## [RICKS Estate]

Administracion to the Estate of Elisha Ricks Late of Boston deceased is granted to John Ricks his Brother on behalfe of himselfe & others concerned hee bringing in an Inventory of s<sup>d</sup> Estate & giue Security to Administer according to Law, this thus done as Attests. Free Grace Bendall Cler.

Present. Jo<sup>n</sup> LEVERETT Esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup> EDW. TING Esq<sup>r</sup>

## [COOPER Estate]

Administracion to the Estate of Francis Cooper Late widdow Gold of Boston deceased is granted to Doctor Daniell Stone and Matthew Bernard, they [53] Bringing in an Inventory of s<sup>d</sup> Estate & giue Security to Administer According to Law. This was thus done y<sup>e</sup> 14<sup>th</sup> 3<sup>mo</sup> 1672. As Attests Free Grace Bendall Cler.

## GIBSON to MOSLY

Robert Gibson Appeared before John Leverett Esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup> & Edw. Ting Esq<sup>r</sup> & Acknowledged a Judgm<sup>t</sup> against himselfe & Estate of forty one pounds twelue Shillings & six pence in mony unto Cap<sup>t</sup> Samm. Mosely being in full of two Bonds & other things as Appeareth per Acco<sup>t</sup> on file, this was thus done as Attests. Free Grace Bendall Cler. Execution issued y<sup>e</sup> 4<sup>th</sup> 4<sup>mo</sup> 1672.

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At a County Court held at Boston y<sup>e</sup> 14<sup>th</sup> 4<sup>mo</sup> 1672, being Adjourned from yesterday by reason of The Fast by the Worshipfull Edw: Ting Esq<sup>r</sup><sup>1</sup>

#### HALL Sentanced

Richard Hall of haverill Late of hull presented for fonication w<sup>th</sup> Martha his now wife before marriage the Court Sentanced them to bee whip't with fifteen Stripes apiece or to pay forty shillings apiece fine to the County in mony w<sup>th</sup> fees of Court & charge of the Constable of Merrimack six Shillings Standing committed till the Sentence be performed.

#### Indians Sentanced

Francke Simon & John all Indians convicted for breaking into Angola Negro's house which they confest The Court Sentanced them to bee whip't w<sup>th</sup> twenty Stripes apiece paying fees of Court & prison Standing committed till the Sentence bee performed.

#### Court Order to the Keeper about JAMES Indian

Vpon the complainte of the Keeper of the Prison of this Towne concerning James an Indian that broke into Benj<sup>a</sup> Scot's house of Brantery & drancke & spoiled Liquors, for which the Court Sentanced him to pay the saide Scot threefold damage & charge of witnesses Thirty two Shillings, & hitherto Saide Scot hath not Looked after him. The Court orders that if saide Scot or any for him come not within a fortnight to discharge the Prison from him, it is in the power of the Keeper to dispose of him.

#### Division of LORINES Estate

Vpon the Motion of the Administrator to the Estate of Thom. Lorine Late of Hull for a divition of s<sup>d</sup> Estate. The Court orders that the widow haue [54] her Thirds for her Life, the Eldest Sone a double portion & the rest of the Children equall portions according to Law.

#### BRAGG Sentanced

Peter Brag, presented by the Select men of this Towne for abiding in this Towne without theire Leaue & having a wife in England The Court Sentanced him to depart for England with the first Opportunity on penalty of Twenty pounds according to Law.

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<sup>1</sup> The list of judges is wanting for this session.

## THO: GOLD's guardian

Daniell Stone is appointed Guardian to Thom. Goold.

Mathew Bernard is Appointed Guardian to Elizabeth Gold & Benj<sup>a</sup> Goold.

## Court Order to Brantry

The Court orders a warrant to bee issued to the Select men of Brantery to make returne to the next Court of this County what they haue done in obedince to y<sup>e</sup> Court's Order concerning the Arrears of the Late Reverend M<sup>r</sup> Hennry Flintte.

## Court order concern BURT's Estate

The Court Orders that Godfrey Armitage who was Appointed Administrator to the Estate of Thom. Burt Late of Boston deceased, giue acco<sup>t</sup> & deliver all the Estate of Thomas Burt, as appeares per Inventory unto John Faireweather Attourney to Giles Burt the onely Brother to the saide Thom. Burt whome the Court admits as sole heire to s<sup>d</sup> Estate & the s<sup>d</sup> Fairweathers power fully proved whose receipt to the s<sup>d</sup> Armitage shall bee a full discharge from his Administracion aforesaide.

## HAUTHORNE &amp;c Sentanced

William Hauthorne William Brasy & Silvanus Davis convicted for disorderly travelling to Dorchester yesterday being the fast day & that contrary to their Master's minde & M<sup>r</sup> Stoughton's Order. The Court Sentences them to pay their offence five Shillings apeice & fees of Court.

Silvanus Davis convicted for Lying the Court Sentences him to pay ten shillings in mony fine.

Daniell Cushine tooke the Oath of Freedom of this Colony.

## Court Order concern. REBECCA GREENE

The Court orders that John Bonner giue good Security to the Court for two hundred pounds in good Spetie for to pay Rebecca the daughter of Richard Greene when she comes to age or day of Marriage, which being done Rebecca y<sup>e</sup> Late widow of Richard Greene is discharged from her Administracion. [55]



TUDER ordered to depart the Towne

John Tudor Committed to prison for contempt of the Order of Court in not departing the Towne, the Court Ordered him to depart by next Thursday vpon penalty of imprisonment<sup>t</sup>

GILFORD discharg<sup>d</sup> from Service

Paul Gilford is by Order of this Court released from his Service to & w<sup>th</sup> Jeremiah Bumsteede & the s<sup>d</sup> Gilford is committed to the honored Gov<sup>r</sup> to dispose of to a good master or as hee pleaseth.

Licences continued

The Court continueth all the Last years Licences adding Nathaniell Bishop to sell Beere & Cap<sup>t</sup> Wright to sell wine.

POINTING ordered to depart y<sup>e</sup> Towne

The wife of Phillip Pointing was Ordered to depart the Towne & goe to Tanton to her husband.

Vpon the humble Petition of Free Grace Bendall the Court was pleased to condescend to his going this Voyage to Madera & accept of M<sup>r</sup> Isaac Addington to offitiate in his place till his Returne of which all persons concerned may take notice.

The Court Adjourned till y<sup>e</sup> 20<sup>th</sup> Ins<sup>t</sup>.

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VIALLS Licence

Vpon certificate from the Select men of Boston John Vyall had his Licence renewed to Sell Beere & wine & keepe a house of publique Entertainment for the yeare Ensuing, & that hee Shall Sell Sider & not for more than two pence per quart. & John Viall as principle in ten pounds & Daniell Stone & John Woodmancy as Sureties in five pounds apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide John Viall shall obserue the Law title Inkeepers w<sup>th</sup> its addicions.

## TURNORS Licence

Vpon like certificate John Turno<sup>r</sup> had his Licence renewed to Sell Beere & wine & keepe a house of publike Entertainm<sup>t</sup> for the yeare Ensuing . . . Cap<sup>t</sup> James Oliver & John Fairewether as Sureties . . .

## [56] NORDEN'S Licence

Samm. Norden, on like certificate had his Licence renewed to Sell Beere & keepe a house of publi<sup>q</sup>ue Entertainm<sup>t</sup> for the yeare ensuing . . . W<sup>m</sup> Smith & Samm. Emmons as Sureties . . .

## KEEN'S Licence

John Keene, on like certificate had his Licence renewed to keepe a Cook's Shop for the yeare Ensuing & John Keene in ten pounds & Robert Cox & Clement Gross in five pounds apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion John Keene shall not Sell wine strong Beere nor Liquors, but shall obserue the Law title Victuallers.

[ There is no title Victuallers in the Laws of 1662 or of 1672; victual-  
lers' and cooks' shops are included under the same regulations as inn-  
keepers.]

## WINSOR'S Licence

Rebecca Winsor on like certificate had a Licence granted her to Keepe a Cook's Shop & to dress & Sell Victualls for the yeare Ensuing & Cap<sup>t</sup> James Oliver & James Brading in five pounds apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Rebecca Winsor shall not Sell Wine, Strong Beere Liquors nor Sider; but Shall observe the Law title Victuallers.

## KENTTS Licence

W<sup>m</sup> Kentt, on like certificate had his Licence renewed to keepe a Cookes Shop for the yeare Ensuing & W<sup>m</sup> Kent in ten pounds & Jo<sup>n</sup> Woodmancy & Dan<sup>n</sup> Stone in five pounds apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion as aboves<sup>d</sup>.

## Cox Licence

Robert Cox, on like certificate had his Licence renewed to Sell Beere & keepe a house of publike Entertainm<sup>t</sup> for the year Ensuing . . . John Keene & Clement Gross [*sureties*] . . .

## GROSS' Licence

Clement Gross on like certificate had his Licence renewed to Sell Beere & keepe a house of publique entertainm<sup>t</sup> for y<sup>e</sup> yeare Ensuing . . . Rob<sup>t</sup> Cox & John Keene [*sureties*] . . .

## [57] POLLARD'S Licence

William Pollard, on like certificate, had his Licence renewed to Sell Beere & keepe a house of publique Entertainm<sup>t</sup> for the yeare Ensuing . . . Jo<sup>a</sup> Woodmancy & Seth Perry [*sureties*] . . .

## WARDELL'S Licence

Widow Wardell, on like certificate, had her Licence renewed, to Sell Beere, & keepe a house of publique Entertainm<sup>t</sup> for the yeare Ensuing . . . John Woodmancy & Seth Perry [*sureties*] . . .

## WRIGHT'S Licence

Cap<sup>t</sup> W<sup>m</sup> Wright on like certificate had his Licence renewed to Sell Beere & keepe a house of publique Entertainm<sup>t</sup> as alsoe to Sell Wine for the yeare Ensuing . . . & Cap<sup>t</sup> James Oliver & Leiv<sup>t</sup> Richard Woody [*sureties*]. . . .

## BISHOP'S Licence

Nathaniell Bishop, on like certificate had a Licence granted him to Sell Beere & keepe a house of publique Entertainm<sup>t</sup> for the yeare Ensuing . . . Cap<sup>t</sup> James Oliver & Leiv<sup>t</sup> Richa<sup>d</sup> Woody [*sureties*] . . .

## VPSHALLS Licence

Widow Vpshall, on like certificate, had her Licence renewed to Sell Beere & keepe a house of publique Entertainm<sup>t</sup> for the yeare Ensuing . . . Joseph Cock & Francis Hudson [*sureties*]. . .

## CORSIER'S Licence

William Corsier, on like certificate had his licence renewed to Sell Beere, & keepe a publique house of Entertainm<sup>t</sup> for the yeare Ensuing . . . Thom. Dewer & John Andrews [*sureties*] . . .

## SALTER'S Licence

William Salter, on like certificate had his Licence [58] Renewed to sell Beere & keepe a house of publique Entertainment for the yeare Ensuing . . . Joseph Belknap & Manasseh Beck [*sureties*] . . .

## HUDSON'S Licence

Francis Hudson on like certificate had his Licence renewed to Sell Beere & keepe a house of publique Entertainm<sup>t</sup> for the yeare Ensuing . . . Joseph Cock & Thom. Bill [*sureties*] . . .

## BEALE of Hingham's Licence

Nathaniell Beale, on certificate from the Select men of Hingham had his Licence renewed to Sell Beere & keepe a house of publique Entertainm<sup>t</sup> for the yeare Ensuing . . . Josiah Hubbard [*surety*] . . .

## SMITH'S Licence

Thom: Smith had his Licence renewed to distill & retaile Strong waters for the yeare Ensuing . . . Jon<sup>a</sup> Ting & Richard Knights [*sureties*] . . . that the s<sup>d</sup> Thom. Smith shall obserue the Law concerning distilling & retailing Strong waters.

## WEY'S Licence

Richard Wey had his Licence renewed to Retaile Strong waters for the yeare Ensuing . . . Cap<sup>t</sup> James Oliver [*surety*] . . . on condition as aforesaide.

## HUDSON'S Licence

Cap<sup>t</sup> W<sup>m</sup> Hudson on like certificate had his Licence renewed to Sell wine & Beere & keepe a house of publique Entertainm<sup>t</sup> for the yeare Ensuing . . . Cap<sup>t</sup> James Oliver & Leiv<sup>t</sup> Joshua Hews [*sureties*] . . .

Isaac Lobdell of Hull, on like certificate had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> [59] for the year Ensuing . . . Joseph Davis & Daaivd Saywell [*sureties*] . . .



The Court mett According to Adjournm<sup>t</sup> June the 20<sup>th</sup> An<sup>o</sup> 1672.

Present

RI: BELLINGHAM, ESQ<sup>r</sup> GOV<sup>r</sup>  
JO<sup>a</sup> LEVERETT, ESQ<sup>r</sup> DEP<sup>t</sup> GOV<sup>r</sup>

EDW<sup>d</sup> TYNG  
W<sup>m</sup> STOUGHTON } ESQR<sup>s</sup>

PLUMM sentenced

Mary Plumm, being committed to Prison for being in the Chamber of Timm<sup>o</sup> Connell late at night being ye 16<sup>th</sup> Instant in Suspitious manner. Acknowledged in Court she was there naked to her Shift where were two men in Bed. The Court Sentances her to be whip't with twenty Stripes & Stands committed to the house of Correction till a Service be provided for her to the Approbacion of the Selectmen of Dorchester.

Court Order for THOM: PATTEN

Mr Thom: Patten, having brought in his acco<sup>t</sup> & given in all the Bills and Bonds mencioned in the Acco<sup>t</sup> vpon oath. The Court Orders that his Ant Justine Patten Signe & Seale him a discharge in full.

DOGGETT & NICHOLS Sentanced

Henry Doggett & Jonathan Nicholls are sentenced to pay ten shillings apeice in mony fine to the County for breach of the Sabbath being convicted thereof & to give in bond for the good behavior. Paying fees of Court Standing committed till the sentence bee performed, & William Tower & Thomas Stanbrough Acknowledged themselues jointly and Severally bound in five pounds apeice to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Henry Doggett & Jonathan Nicholls shalbee of good behavior & appear at the next Court of this County.

CONNELL sentanc'd [and] Bond for the Behavior

Timm<sup>o</sup> Connell convicted for giving Entertainm<sup>t</sup> in his house to men & women in the night in a Suspitious mann<sup>r</sup>. The Court Sentances him to bee bound to the good behaviour & and pay fees of Court Standing committed till hee finde Sureties. The Court accepted of his one bond. [60]

And accordingly the saide Tim<sup>o</sup> Connell Acknowledged himselfe

bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that hee the saide Connell shalbee of good Behavior & Appear at the next Court of this County.

TAYLOR fined 5<sup>s</sup>

John Taylor convicted for breach of the Peace in Strikeing Brian Murphey. The Court Sentanced him to pay five Shillings in Mony fine to the County & fees of Court.

ALICE THOMAS her Liberty

In Answer to the petition of Alice Thomas The Court alloweth her Liberty to bee abroad from Eight of the clocke in the morning till Six a clocke at night. She giving in Sufficent Security to the Keeper to Return to Prison every night at the hour Appointed & to be a true prisoner & this Liberty to continue till the first day of the next Court of this County.

[ See above, p. 83.]

Freemen Sworn

Symon Amory, Henry Allen, James Townsend, Edw. Grant & William Griggs tooke the Oath of Freedom of this Colony.

Bakers of Bread Peticion answered

In Answer to the Peticion of the Loafe bread Bakers the Court Refers it to the Select men of Boston to see what may bee redressed of theire complaints.

Att a County Court held at Boston, y<sup>e</sup> 30<sup>th</sup> of July 1672.

Present

RI: BELLINGHAM Esq <sup>r</sup> Gov <sup>r</sup>	ELEAZER LUSHER	} Esq <sup>rs</sup>
JO <sup>n</sup> LEVERETT Esq <sup>r</sup> dep <sup>t</sup> Gov <sup>r</sup>	EDW. TING	
	WILLIAM STOUGHTON	

Grand Jurie Sworne

m <sup>r</sup> Jo <sup>n</sup> Phillips	Heugh Clarke	Thom: White Sen <sup>r</sup>
Jo <sup>n</sup> Button	Jo <sup>n</sup> Smith	Edw <sup>d</sup> Pitts
Jo <sup>n</sup> White Sen <sup>r</sup>	August <sup>n</sup> Clements	James Bates
Bart <sup>o</sup> Cheevers	Ant <sup>o</sup> Gulliver	Nathan <sup>ll</sup> Bosworth
Griffen Crafts	Rob <sup>t</sup> Twelves	Jo <sup>n</sup> Gay Sen <sup>r</sup>
		Jo <sup>n</sup> Thurston Sen <sup>r</sup>

Jurie of Trialls Sworne

m <sup>r</sup> Jo <sup>n</sup> Faireweather	Nathan <sup>ll</sup> Burrows	W <sup>m</sup> Richards Sen <sup>r</sup>
Rich <sup>d</sup> Crispe	Thom: Baker	Edm <sup>r</sup> Hubbert
Jerm: Cushing	Rob <sup>t</sup> Searle	Benj <sup>a</sup> Bosworth jun <sup>r</sup>
Benj <sup>a</sup> Gibbs	John Cleverly	Asahel Smith

Joshua Atwater, plaint. against Daniell Searle Esq<sup>r</sup> Defend<sup>t</sup> according to Attachm<sup>t</sup> pl<sup>t</sup>. Non Suited vpon non appear<sup>e</sup>

[WYBORN v. MARSHALL]

John Wibourne, plaint. ags<sup>t</sup> Robert Marshall Defend<sup>t</sup> in an action of the case for withholding about twelue pounds in mony due for Service done as Ma<sup>r</sup> onboard or about the Pincke Lenham as by Agreement vnder the hand of the saide Marshall, bearing date y<sup>e</sup> 17<sup>th</sup> of January last past may appeare, & all due damages according to Attachm<sup>t</sup> dated y<sup>e</sup> 7<sup>th</sup> day of May 1672 . . . the Jurie . . . found for the pl<sup>t</sup> four pounds according to contract & costs of Court being 24<sup>s</sup> 8<sup>d</sup>

Execucion issued for £5. 4. 8 mony Xber. 20:1672.

[Apparently the continuation of a case begun before the Commissioners' or Strangers' Court at Boston on June 18, 1672. Writ against Robert Marshall to appear at the Commissioners' Court on that date to answer to John Wyborn is in S. F. 1120.1. The following evidence was taken at that time (S. F. 1120.3):

The testimony of Thomas Wyborne aged 37 yeares or there about testifieth and saith that some considerable tyme since the Pink Lenham arrived at Boston

from puscataqua I this depo<sup>nt</sup> did heare Robert Marshall often and severall tymes say that John Wiborn had faithfully and truly served him both for fidelity and abillity in what he was about and not onely at Puscataque aboard the said pinke but also in the voyage to Boston as Master and Pilot And that after John Wiborne had informed the said Marshall that he could get no money of Thomas Clarke vpon the accompt of them nootes written to him then the said Marshall did say it was very well done of the said Wyborns part and that hee did alow and approve of what the said Wiborne had done, and that he the said Marshall would take order for money to pay spedily the said Wiborne & company their wages to content according to former contract vnder the said marshalls hand, And also the said wiborne did aske the said marshall severall tymes for provisions for the mens necessities, and Marshall did promise to pay and satisfie in money whatsoeu[er] the said wyborne had layd out or expended for him selfe or for the said Marshall or the Pink Lenham or for whatsoever hee stood as suerty for the companey of what nature soever desiring that the said Wiborne would pas his word for him a little longer in any publick house, the said Marshall did say that his credit would not pas, & that he would pay him all his former expences and disbursments and also that [he] would pay whatsoeu[er] the said wyborne did stand ingaged for him selfe the Pink or Company in money.

Sworne in Court the 18<sup>th</sup> of June 1672 as attest Robert Howard Cler Cur Commiss

Other testimony to the same effect is in S. F. 1120.2, 4. Marshall entered a counter suit against Wyborn at the October Court, but was non-suited. Below, p. 174.] [61]

[KENT v. SMITH]

William Kentt pl<sup>t</sup> ags<sup>t</sup> Thomas Smith Defend<sup>t</sup> in an Acion of the case for Selling vnto the saide pl<sup>t</sup> a Serv<sup>t</sup> woman w<sup>ch</sup> the saide Defend<sup>t</sup> brought out of England, cal'd by the name of Sarah Blacklock, who did acknowledge aboard the Vessell to the saide Defend<sup>t</sup> & others, that she was guilty of a capitall crime w<sup>ch</sup> she had committed in old England w<sup>ch</sup> is conceived to bee the murthering of a Childe, she had by a dutchman in England which is by her one confession in Court. And that the saide Defend<sup>t</sup> did conceale the same from the plaint. although hee formerly knew it, and is now by law taken of by Authority & committed to prison, for w<sup>ch</sup> Serv<sup>t</sup> the plaint. gave the Defend<sup>t</sup> Eight pounds in mony, w<sup>ch</sup> Serv<sup>t</sup> was never made over according to law by the Defend<sup>t</sup> but refused to doe the Same & due damages according to attachm<sup>t</sup> dated y<sup>e</sup> 21<sup>th</sup> of June, 1672. . . . The Jurie . . . founde for the pl<sup>t</sup> Eight pounds dammage in m<sup>o</sup> & costs of Court, w<sup>ch</sup> was twenty six shillings & eight pence.

Execution issued y<sup>e</sup> 8<sup>th</sup> Aug<sup>o</sup> 72 for 9<sup>li</sup> 6<sup>s</sup> 8<sup>d</sup> m<sup>o</sup>

[ See below, pp. 149, 164-5, 185, 189, 237.]



LIDGETT ags<sup>t</sup> LEONARD

Peter Lidgett Assigne of Henry Tailor pl<sup>t</sup> ags<sup>t</sup> Henry Leonard defend<sup>t</sup> for non paiment of one hundred sixty two pounds Seventeene shillings ninepence, due by bond vnder his hand & seale bearing date the 13<sup>th</sup> day of October 1670, w<sup>th</sup> Interest & damage for nonpaiment according to time & other due damages according to Attachm<sup>t</sup> dated y<sup>e</sup> 21<sup>th</sup> June 1672. . . . The Jurie . . . found for the P<sup>t</sup> the forfeiture of the bond three hundred twenty five pounds fifteen shillings, sixpence & costs of Court w<sup>ch</sup> was thirty three shillings and two pence.

Execucion issued vlt<sup>o</sup> April 1673 for 327<sup>li</sup>: 8: 8:

WOODMANCY ags<sup>t</sup> JOY

John Woodmancy, pl<sup>t</sup> ags<sup>t</sup> Thomas Joy Defend<sup>t</sup> in an action of the case for withholding the summe of three hundred Seventy & eight pounds seven shillings and eight pence or thereabouts in m<sup>o</sup> & other currant pay due to the saide Woodmancy by booke as appeareth by aco<sup>ts</sup> & other due damages according to Attachm<sup>t</sup> dated y<sup>e</sup> 8<sup>th</sup> day of May 1672. . . . The jurie . . . found for the pl<sup>t</sup> 378<sup>li</sup> 7<sup>s</sup> 8<sup>d</sup> accord to acco<sup>t</sup> & costs of Court w<sup>ch</sup> is 56<sup>s</sup> 2<sup>d</sup>

Execucion issued Aprill 11<sup>th</sup> 1673 for 378<sup>li</sup> 7<sup>s</sup> 8<sup>d</sup> accord. to Acco<sup>t</sup> & 56<sup>s</sup> 2<sup>d</sup> m<sup>o</sup>.

[See above, pp. 45, 64, 101, 103, and below, pp. 134, 145, 149. Copies of the execution, return, and apprisement, are in S. F. 1261. Joy's frame house near the North Meetinghouse was appraised at 30*l*; a lot 25 feet front and 71 feet depth "fronting to the great Street before the S<sup>d</sup> meetinghouse," at 48*s* per foot; a lot 37 foot 10 inches front, 40 foot depth "fronting to the Lane that goes down from the North meetinghouse to the water-side," at 40*s* per foot; a backlot to the house, 38 by 40 feet, 20*l*] [62]

CARVER ags<sup>t</sup> JENNINGS

Robert Carver plaint. ags<sup>t</sup> John Jennings's Defend<sup>t</sup> in an accion. of the case for the forfeiture of one hundred pounds Sterl. for the saide Jennings breache of the 8<sup>th</sup> Article made, indented & fully concluded vpon at Jamaica y<sup>e</sup> 19<sup>th</sup> day of Febr 1671½. vnder his hand & Seale, as reference being had vnto the saide 8<sup>th</sup> & last Articles may & doth more at lardge appeare. & all other due dammages according to Attachm<sup>t</sup> Dat. y<sup>e</sup> 18<sup>th</sup> of July. 1672 . . . the Jurie . . . finde for the Defend<sup>t</sup> costs of Court.

NORMAN ags<sup>t</sup> LONG

Thomas Norman, Attorney of Walter Woode pl<sup>t</sup> ags<sup>t</sup> Zechariah Long Defend<sup>t</sup> in an accion of the case for the breach of a penall Bond in the Summe of three hundred pounds of good & lawfull mony of England, & due dammages according to Attachm<sup>t</sup> Dat the 7<sup>th</sup> day of June 1672 . . . the Jurie . . . finde for y<sup>e</sup> plaint. the forfeiture of the Bond 300<sup>li</sup> good & lawfull mony of England & costs of Court.

Execucion issued y<sup>e</sup> 3<sup>d</sup> of Aug<sup>o</sup> 72 for 300<sup>li</sup> Lawfull mony of England.

DAVENPORT ags<sup>t</sup> WHARTON

Eleazer Davenport plaint. ags<sup>t</sup> Richard Wharton Defend<sup>t</sup> in an accion of the case for refusing or neglecting to pay the Summe of Six pounds, due to the saide Davenport as aforesaide for three dayes demorage according to Charter-party bearing date London 31<sup>th</sup> January 1671 & other due dammages according to Attachm<sup>t</sup> Dat. y<sup>e</sup> 25<sup>th</sup> day of July 1672 . . . the Jurie . . . finde for the plaint. Six pounds mony dammage & costs of Court.

BLANEY ags<sup>t</sup> PAGE

John Blaney, in behalfe of himselfe & the rest of his Owners plaint. ags<sup>t</sup> Nicholas Page Defend<sup>t</sup> in an accion of the case for the forfeiture of two hundred pounds Sterl. mony of New England for his the s<sup>d</sup> Page his breach of Covenant or Covenants mencioned in a Charter party vnd<sup>r</sup> his hand & Seale bearing date the 9<sup>th</sup> of march 167<sup>o</sup>/<sub>11</sub>. & all other due dammages according to Attachm<sup>t</sup> Dat. y<sup>e</sup> 18<sup>th</sup> of July 1672 . . . the Jurie . . . finde for the Defend<sup>t</sup> costs of Court. [63]

TOY ags<sup>t</sup> HOWARD

Isaiah Toy, plaint. ags<sup>t</sup> John Howard Defend<sup>t</sup> in an accion of the case for depriving him of the vse of his mare by taking her into his custody & riding her & deteining her illegally to the great dammage of the saide Toy & other due dammages according to Attachm<sup>t</sup> Dat. the 22<sup>th</sup> of July 1672 . . . the Jurie . . . finde for the plaint the mare in controversy or ten pounds mony dammage & costs of Court.

JENNINGS ags<sup>t</sup> CARVER

John Jennings, plaint. ags<sup>t</sup> Robert Carver Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. the 16<sup>th</sup> of July 1672. The plaint. in failor of process is non Suited.

CHECKLY ags<sup>t</sup> SHAW

Anth<sup>o</sup> Checkly assigne of John Viall plaint ags<sup>t</sup> John Shaw Defend<sup>t</sup> in an accion of Debt for non paim<sup>t</sup> of thirteene pounds in currant mony of New England due by bill w<sup>th</sup> other due dammages according to Attachm<sup>t</sup> Dat. July 13<sup>th</sup> 1672 . . . the Jurie . . . finde for the plaint. thirteene pounds mony dammage, & Costs of Court w<sup>ch</sup> was twenty six shill.

Execucion issued 6<sup>th</sup> Aug<sup>t</sup> 72 for 14<sup>li</sup> 6<sup>s</sup> m<sup>o</sup> execucion renew<sup>d</sup> y<sup>e</sup> 15<sup>th</sup> 5m<sup>o</sup> 73 for 4<sup>li</sup> 18<sup>s</sup>

NORMAN ags<sup>t</sup> SALTER

Thomas Norman, plaint. against Will<sup>m</sup> Salter Defend<sup>t</sup> in an accion of the case for neglecting of his deuty in the safe keeping of Paul Parker, formerly committed a prisoner to his custody on suspicion of gameing who made his Escape to the damage of the saide Norman in the Summe of 25<sup>li</sup> lawfull money of New England according to the judgm<sup>t</sup> of the Court of Assistants as by the records more particularly may appeare & all other due dammages according to Attachm<sup>t</sup> Dat. the 25<sup>th</sup> of July 1672. . . . The Jurie . . . finde for the Defend<sup>t</sup> costs of Court.

BUNN ags<sup>t</sup> HEARCY

Edward Bunn of Hall plaint. ags<sup>t</sup> John Hearcy & Ephraim Hewet of Hingham vpon appeal from the Commission<sup>rs</sup> Court of Hingham. After the Attachm<sup>t</sup> Courts judgm<sup>ts</sup> & Evidences produced were read. . . . The Jurie . . . finde the reversion of the former judgm<sup>t</sup>. Six pence a hogg dammage for as many as were impounded & costs of Courts. [64]

CLARK ags<sup>t</sup> BRIDGHAM

Richard Collicott Hump<sup>r</sup> Hodges & Anth<sup>o</sup> Checkly, or either of them Attorny of Thomas Clarke late of Plim<sup>o</sup> pl<sup>t</sup> ags<sup>t</sup> M<sup>rs</sup> Bridgham widow & relict of M<sup>r</sup> Henry Bridgham late of Boston deceased Defend<sup>t</sup> in an accion of reveiw of an Accion of the case of ninety pounds commenced by the saide Clarke ags<sup>t</sup> the saide M<sup>rs</sup> Bridgham at a County Court held in Boston in April last, for vnlawfully withholding & refusing to deliver vnto the saide Clarke a Summe of mony of his of above forty four pounds w<sup>ch</sup> shee clandestinely received of Alice late wife to the saide Thom: Clarke without his knowledge, consent or

approbacion, it being committed vnto her by the saide Alice who never had power soe to doe, vpon w<sup>ch</sup> accion judgment was granted against the saide Clarke for Costs of Court much to his dammage in regard the aforesaide Summe of mony is properly the Estate of the saide Clarkes w<sup>th</sup> other due dammages according to Attachm<sup>t</sup> Dat. July 22<sup>nd</sup> 1672. . . . The Jurie . . . finde for the pl<sup>t</sup> forty four pounds mony in controversy & costs of Court. Elder John Wiswell as Attorney for the Defend<sup>t</sup> appealed from the judgm<sup>t</sup> of this Court to the next Court of Assistants & accordingly the saide Elder Wiswell in Eighty four pounds as principall & M<sup>r</sup> Anth<sup>o</sup> Stoddard & Cap<sup>t</sup> Edw. Hutchinson as Sureties in forty two pounds apeice acknowledged themselves jointly & Severally bound to . . . prosecute his Appeale . . .

[See above pp. 99-100. Mrs. Bridgham died about November 1, 1672, and the Court of Assistants allowed Thomas Clarke to begin the case *de novo*; see below, p. 201. Mrs. Bridgham's will and the inventory of her estate follow (S. F. 1177.4, 6):

In the Name of God Amen

I Elisabeth Bridgham of Boston Widow, being sick of body, but perfect in memory, blessed bee God, Doe make this my Last Will & Testament as followeth — Inp<sup>m</sup>is I commit my Soul into the Mercifull hands of God my Creator & Redeemer, & my body to earth from whence it came, hoping that at the last day it shall arise a glorious body, Like unto the body of my Lord & Saviour Jesus Christ; & my Estate, which my Late Husband Henry Bridgham by his last Will Left mee to dispose of, (that is to say) one hundred pounds & all the household goods, the which I doe give & bequeath as followeth First I give & bequeath unto my eldest Son John out of the one hundred pounds aforementioned to buy bookes with the Summe of Fifty pounds, & the other fifty pounds I give & bequeath as followeth (that is to say) forty pounds unto my Son Joseph, & the other ten pounds unto my other four Sons to bee equally devided between them; Further I give unto my Son John a new paire of blew Curtaines & vallants, that haue not been vsed. Itm. I give & bequeath unto my Son Jonathan the best paire of greene Curtains & vallants, my best greene Rugg, the best Feather bed & boulster, with the best bedsteede, & the rest of my household goods, I give & bequeath unto all my six Sons to bee equally devided between them.

Itm. it is my further minde according as in my saide Husband's Will is provided, That in case any of my saide Sons shall take any jndirect course, it shalbee in the power of my overseers hereafter named to cut short & lessen what I haue given unto them & bestow the same on such of them as shall better deserve the same.

Itm. I give unto my Sister Hannah Buttall my best cloth gowne my best black Cloake & my best wearing Linnen, & the rest of my Wearing apparrell, I give unto such poor persons as the discretion of my Over Seers shall thinke fit: And I doe appoint my Son Jonathan Executo<sup>r</sup> of this my last Will & Testam<sup>t</sup> & m<sup>r</sup>



Anthony Stoddard, Deacon Robart Sanderson & Deacon Henry Allen Deacons of the first Church of Boston Over Seers of this my saide Last Will & Testament, & all other former Wills, gifts & bequests I revoake & make voide for ever by these pu'sents. In Witness whereof I the saide Elisabeth Bridgham haue hereunto Set my hand & Seale, this second day of August in y<sup>e</sup> yeare of o<sup>r</sup> Lord, one thousand six hundred Seventy two.

[Attested Copy]

Elisabeth Bridgham  
her × marke & a Seale

An Inventory of the Goods & Chattles of M<sup>rs</sup> Elisabeth Bridgham Deceased, taken by us whose Names are hereunto Subscribed y<sup>e</sup> 12<sup>th</sup> of 6<sup>th</sup> m<sup>o</sup> 1672.

	<i>l</i>	<i>s</i>	<i>d</i>
A Long Table, a round Table & two formms . . . . .	02:00:00		
an old Carpet. 3. Cushions. 2 Leather Chaires . . . . .	00:15:00		
a paire of Cobjrons & an jron back . . . . .	01:00:00		
a Feather bed, 3. blanketts a Rugg, curtaines and bedsteed. 2 bouldsters & two pillows . . . . .	09:00:00		
a Trundle bedsteed, a feather bed, boulder, two blanketts & a Rugg	04:03:00		
a Long Table. 8 joint Stools. 4 Chaires & 2 Cushions . . . . .	02:07:00		
a court Cupboard, a Chest, a Cupboard cloth a box & booke case . .	02:10:00		
a paire of andjrons, fire Shovell, tongs, warming pan & jron back . .	02:05:00		
7 paire of course Sheets. 2. Table cloths. 12 Towells. . . . .	03:10:00		
a brass Morter & pestle. 4. earthen Dishes, two window Curtaines & 2 Smoothing irons . . . . .	00:17:00		
a Featherbed. 2. bouldsters. 3. blanketts. 3. pillows, a Rugg, Curtains & bedsteede . . . . .	11:00:00		
a Rugg, a blanket, a new paire of Searge Curtains an old paire of Cur- tains, a Carpet. 2 window Curtains & 2 little Carpets . . . . .	10:00:00		
a Court Cupboard Cupboard cloth, 1 Chest. 3. Truncks, a round Table, 6. Chaires. 4. Cushions & a Skreane . . . . .	09:00:00		
In Pewter . . . . .	07:10:00		
4. paire of Sheets. 4. paire of pillow beers. 2. doz <sup>n</sup> & 3. Napkins. 2. table Cloths. 2 Towells & Cupboard Cloths. 3 Table Cloths & a halfe Sheete . . . . .	09:00:00		
a Feather bed, a boulder. 4. pillows. 3 blanketts, a coverlid, curtains & bedsteede . . . . .	11:00:00		
a Court Cupboard, 2 Chests, 8 Chaires. 3. Cushions . . . . .	06:05:00		
a paire of andjrons, a Carpet, earthen-ware & Trench <sup>rs</sup> . . . . .	01:00:00		
a Feather bed, boulder, 2 flockbeds, 2 bouldsters 9 blanketts, 3 Ruggs 3. halfe bedsteeds . . . . .	08:10:00		
a Copper. 2. brass Kettles, with other brass things 4. jron pots, a Kettle, Chimny back, 2 paire of Cob jrons, spits & trammell, chaires & .1. paire of Stilliards . . . . .	12:00:00		
Given her to dispose of besides these things . . . . .	100:00:00		
Total is . . . . .	213:12:00		

Anthony Stoddard  
Robert Sanderson  
Henry Allen

*Sworn to by Jonathan Bridgham, November 5, 1672]*

FRANCKES ags<sup>t</sup> STONE & Company

John Franckes pl<sup>t</sup> ags<sup>t</sup> Daniell Stone Caleb Tailor & John Ely Defend<sup>ts</sup> in an Accion of the case for non paim<sup>t</sup> of Seventy one pounds nine shillings & five pence due for Service done by the saide Franckes & comp<sup>a</sup> in the saide Katch Willing minde & due dammages according to Attachm<sup>t</sup> Dat. July the 2<sup>d</sup> 1672 . . . the Jurie . . . finde for the pl<sup>t</sup> his portlidge bill<sup>1</sup> Seventy one pounds nine Shillings five pence & Costs of Court.

Execution issued 6<sup>th</sup> of Aug<sup>o</sup> 72 for 71<sup>li</sup> 9<sup>s</sup> 5<sup>d</sup> in m<sup>o</sup>

[ See third case below.]

[65] BAKER ags<sup>t</sup> JOY

Nathaniell Baker, pl<sup>t</sup> ags<sup>t</sup> Thomas Joy Defend<sup>t</sup> in an Accion of Slander to the Vallue of one hundred pounds for Saying & reporting that the saide Baker had taken a false Oath, (that is to say) that Oath w<sup>ch</sup> hee Swore in the case betweene Cap<sup>t</sup> James Oliver & m<sup>r</sup> John Woodmancy at Octob<sup>r</sup> Court last was a false Oath; w<sup>th</sup> all due damages according to Attachm<sup>t</sup> Dat. July 25<sup>th</sup> 1672. . . . The Jurie . . . finde for the pl<sup>t</sup> that the Defend<sup>t</sup> make an acknowledgm<sup>t</sup> this Court in open Court to the Satisfaccion of Bench & Jurie or play to the pl<sup>t</sup> ten pounds in mony damage & Costs of Court. The Defend<sup>t</sup> appealed from the judgm<sup>t</sup> of this Court to the next Court of Assistants. & accordingly the saide Thomas Joy as principle in twenty pounds & Thomas Gill & Joseph Joy as Sureties . . . that the saide Thomas Joy shall prosecute his Appeale . . .

[ See above, p. 129.]

COWELL ags<sup>t</sup> WOODELL

Edward Cowell, pl<sup>t</sup> ags<sup>t</sup> Gershom Woodell Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat the 15<sup>o</sup> of May 1672. The pl<sup>t</sup> in failor of process is nonsuited.

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<sup>1</sup> A corruption of "portage," which originally meant a seaman's privilege or space allowed him for goods on his own account. When this mode of recompensing a sailor became obsolete, the word "portage" was used for seamen's wages. A portage bill means "the register or account of the names and claims for wages, allowances, etc., of the crew of a ship." A blank "Portage Bill" issued by a Boston stationer about the year 1901 is before me as I write. See New English Dictionary under "Port, sb.<sup>1</sup> 4," and "Portledge"; the examples there given were furnished by our associate, Albert Matthews.

FRANCKS ags<sup>t</sup> ELY

John Franckes, pl<sup>t</sup> ags<sup>t</sup> John Ely Defend<sup>t</sup> in an Accion of the case for abusive carriage vnjustly molesting the saide pl<sup>t</sup> when hee was about his Lawfull occasions onboard the Catch Willing minde, w<sup>th</sup> due dammages according to Attachm<sup>t</sup> Dat. July 23<sup>th</sup> 1672. . . . The Jurie . . . finde for the Defend<sup>t</sup> costs of Court. because not action-able in this Court.

[ See third case above.]

WALDREN ags<sup>t</sup> SMITH

William Waldren, administrato<sup>r</sup> to the Estate of Oliver Dancomb ags<sup>t</sup> pl<sup>t</sup> X<sup>to</sup>pher Smith Defend<sup>t</sup> in an accion of the case for not giving an acco<sup>t</sup> of the saide Duncomb's third part of a deck<sup>t</sup> Shallop or barque burden about ten or twelve tunns whereof hee the saide Smith was ma<sup>r</sup> & alsoe a third part of the Cargoe Shipped on her of the saide Duncomb's & committed to yo<sup>r</sup> trust to the Vallue of Eighty pounds or thereabouts in mony. [66] And for not delivering the produce thereof to the pl<sup>t</sup> though lawfully demanded, & all due dammages according to attachm<sup>t</sup> Dat. July 6<sup>th</sup> 1672. . . . The Jurie . . . finde for the Defend<sup>t</sup> costs of Court w<sup>ch</sup> was four shillings sixpence.

Execution issued Aug<sup>o</sup> 10<sup>th</sup> 72 for 4<sup>s</sup> 6<sup>d</sup> m<sup>o</sup>

[ See following case.]

WALDREN ags<sup>t</sup> SMITH

William Waldren, pl<sup>t</sup> ags<sup>t</sup> X<sup>to</sup>pher Smith Defend<sup>t</sup> in an Accion of the case for not giving an acco<sup>t</sup> of the saide W<sup>m</sup> Waldren's third part of a Deck Shallop or barque burden about ten or twelve tunns whereof the saide Smith was Ma<sup>r</sup> & alsoe an acco<sup>t</sup> of the third part of the Cargoe Shipped on her of the saide Waldren's & committed to the saide Smith's trust to the Vallue of Eighty pounds or thereabouts in mony & for not delivering the produce thereof to the plaint. though lawfully demanded & all other due damage according to attachm<sup>t</sup> Dat. July 6<sup>th</sup> 1672. . . . The Jurie . . . finde for the Defend<sup>t</sup> Costs of Court being ten Shillings & eight pence.

Execution issued Aug<sup>o</sup> 10<sup>th</sup> 72 for 10<sup>s</sup> 8<sup>d</sup> m<sup>o</sup>

[The date of this case is July 30, 1672. The unnamed decked shallop or barque, owned in equal thirds by William Waldren, Oliver Dancomb, and Christopher Smith, with the last named as master, sailed from

Boston in April and again in August, 1671, on trading voyages to the Bay of Fundy, with the following cargoes (S. F. 1194.47, 48):

Sold Christopher Smith & Company y <sup>e</sup> 13 <sup>o</sup> March: 1671		<i>li s d</i>
61½ yd <sup>s</sup> of yd & ⅙ broad fine blew Cotten at 2/10: per yd . . . .	08:14:03	
30 yds of Steele blew Duffalls at 5/6 per yd . . . . .	08:05:00	
2. p <sup>s</sup> of red Stammells. cont <sup>a</sup> 19. & 18: yds. is. 37 yds at . 6/9. per yd . .	12:09:09	
1 <sup>li</sup> ½ of Copper lace at 18 <sup>s</sup> per <sup>li</sup> . . . . .	01:07:00	
1 barrell of powder . . . . .	05:10:00	
1 <sup>c</sup> of goose Shot. 28 <sup>s</sup> 1 doz <sup>n</sup> of Sword blades at: 3 <sup>s</sup> . . . . .	03:04:00	}
per p <sup>s</sup> /36 <sup>s</sup> . . . . .		
2 doz <sup>n</sup> of Hatchets at: 2 <sup>s</sup> per p <sup>s</sup> . . . . .	02:08:00	
4 doz <sup>n</sup> of Flicing knives at 9 <sup>s</sup> per doz <sup>n</sup> . . . . .	01:16:00	
1 bar <sup>ll</sup> of porke /60 <sup>s</sup> . . . . .	03:00:00	
3 <sup>c</sup> of bread at: 20 <sup>s</sup> per <sup>c</sup> . . . . .	03:00:00	
1 Cod line 2 <sup>s</sup> . . . . .	00:02:00	
64 gall ½ Brandy at 4 <sup>s</sup> per gall: & filling 8 <sup>s</sup> . . . . .	13:06:00	
p <sup>d</sup> you for to pay for Tobacco 30 <sup>s</sup> . . . . .	01:10:00	
2 funnells & Lanthorne 5 <sup>s</sup> ½ <sup>li</sup> 18 <sup>d</sup> [N]ayls ½ <sup>li</sup> flintts 18 <sup>d</sup> . . . .	00:07:03	
6 Kettles . . . [from 8s 2d to 1l 3s 0d each], . . . . .	04:12:03	
To 90 <sup>li</sup> of Bullets at: 4 <sup>d</sup> per <sup>li</sup> 30 <sup>s</sup> : 22 <sup>li</sup> of Shott at: 3 <sup>d</sup> ½ per <sup>li</sup> 6/5 . .	01:16:05	
. . . true Coppie . . . Attests Isaac Addington Cler.	£:71:07:11	

An Account of Goods that Oliver Duncomb & William Waldren put aboard a Deck't Shallop for a Voiadge to the Eastward for their parts about the Middle of August: 1671

	<i>li s d</i>
It: 7 Shirts . . . . .	01:15:00
It: a peice of Manchester . . . . .	00:02:06
It: 4 yds ½ of Broad Cloth . . . . .	02:05:00
It: 20 yds of Duffells . . . . .	05:00:00
It: yd & a halfe of blew . . . . .	00:07:06
It: 18 yds of double Shagg . . . . .	05:00:00
It: 3 Lardge blanketts . . . . .	02:14:00
It: 4 Musketts . . . . .	04:00:00
It: 6: trading gunns . . . . .	09:00:00
It: 1: pistol . . . . .	00:10:00
It: Canvas for Sailes . . . . .	06:08:00
It: 6 hundred of Bread . . . . .	05:05:00
It: 30 bushells of Corn . . . . .	03:12:06
It: 1 gross of pipes & Candles . . . . .	00:06:00
It: Vinnegre & oyl & lines & pease . . . . .	01:06:06
It: Making the Sailes, with hallyards & other things . . . . .	02:17:00
It: a barrell of Porke . . . . .	03:05:00
It: 14l: gallons' of liquor or thereabout . . . . .	15:05:00
It: 1 barrell of Molasses . . . . .	01:05:00
It: 1 ankor . . . . .	01:04:00
Paide to m <sup>r</sup> Shrimpton for goods' . . . . .	05:08:00
These goods were Duncombs' & Waldren's part . . . . .	76:16:00

William Waldren



It: More goods of m <sup>r</sup> Shrimpton which Christopher Smith should have paide with his owne Estate for his part, but hee paide it out of the Stock's goods, which I desire the Honoured Court & Jury to	<i>li s d</i>
Consider of . . . . .	<u>38:06:11</u>
The Totall is . . . . .	115:02:11

Among the two-score depositions on record in the case, the following sufficiently indicate the incidents of the voyage which led to a dispute among the three partners over the proceeds:

S. F. 1194.18

John Williams aged about 26 yeares, testifieth & witnesseth that hee was Shipped by Christopher Smith upon a Sloope & was to haue for his Service thirty five Shillings a month in Mony, & that hee entred into pay the second day of March, 1671, & went then toward the Eastward, whether they was bound, but in going at S<sup>t</sup> John River the saide Christopher Smith & hee disagreed; whereupon Christopher Smith put him ashoare without any wages, but complaining to others that was there, with other Vessells how that hee should make a broken Voiadge, by reason of his absence, thereupon they perswaded him to goe aboard on the Sloope againe, on which they traded with the Indians till that they was willing to return but in returning toward Boston, they staied one night at Kabunkidle & they there disagreed againe, in soe much that Christopher Smith turned him ashoare againe without his pay, & withall told him that hee Should never haue it; But that hee should not bee Left destitute of Succor one Richard Shute came with a Boate & another man & tooke him aboard upon another vessell & desired & perswaded him to goe on board Christopher Smith's vessell againe; which by there perswasions was willing & proffered to goe aboard on m<sup>r</sup> Smiths' vessell, but hee would not let him come aboard but told him that hee would Shoote him or bee the death of him if he set his foote upon his Vessell, and the saide John Williams in trading with the jndians Witnesseth that hee tooke for Severall English goods of the jndians forty moose Skinns & upward & about three packs of Beaver each pack containing five & twenty Skinns alsoe certaine Otter Skinns, certain Martins & certain Musquash skinns & some certain dressed Moose skinns; alsoe the saide John Williams witnesseth, that these English goods was left of those goods they tooke out of Boston as are here underwritten.

Inp<sup>r</sup>mis, one peice of red Slammell, halfe a peice of trucking Cloth, part of a peice of blew Cotten, certain indian Coates made of red Slammell, one barrell of powder some Shot, some trading knives, some Sword blades & certain gunns about nine or ten in Number, a parcell of Tobacco, some indian Corn, & some certain Kettles, & the saide John Williams Witnesseth that the abouenamed Christopher Smith sent off his vessell, by George Manning belonging to another vessell, two Otter Skinns & one beaver Skinn & alsoe by one Richard Shute three trading gunns, as tokens to his wife at Boston,

And doe farther testify that as the saide Smith told mee hee & Oliver Duncomb & William Waldren were partn<sup>rs</sup> in the abouesaide voiadge & voiadges; I further testify that Smith told mee that the Cargoe in the vessell in that voiadge wherein hee was Master of her & in which Oliver Duncomb dyed, cost at Boston one hundred pound's & upwards in Mony.

Sworne in Court: 31: 5: 72, as Attests Isaac Addington Cler.

S. F. 1194.17

Alexand<sup>r</sup> Waugh aged about 34 yeares, testifieth & saith, that hee did help to put on board of a Deckt Shallop at Boston about the middle of August last, (whereof was Christopher Smith Master) & doe know that many goods were carried in her which were oliver Duncombs, William Waldrens & the saide Smiths & they were equall partners thereof, & I haue heard them the saide Duncomb & Smith who went the voidage, say that the saide Cargoe cost one hundred pounds & more in Mony, & I doe know there was received on board the saide Shallop in part of Barter for part of the saide goods Nineteene Moose Skinns of which one was lost, four packs of Beaver, each pack containing twenty five Skinns & some odde Skinns more, some Otter two small parcells, all these Skinns were brought from Nova Scotia in the saide Shallop, (which was one third part of her the saide Smiths', & one other third part, the saide Duncombs' & one other third part the said Waldrens) with which saide Skinns hee the saide Smith & Thomas Wilcot was ordered by Oliver Duncomb to return to Boston but in comming towards Boston by reason of bad weather wee were driven off to Sea for severall dayes, soe that wee knew not where wee were, but finding land againe wee ran ashoare for in the bad weather wee Lost Severall of the Materialls belonging to the Vessel, soe that she was not fit to come to Boston & when she was ashoare wee tooke out those goods that was in her, which were the aforementioned Skinns & one frying pan, & the greatest part of the Maine Sayle & afterwards the saide Smith set fire on her wilfully & burnt her vpon addiwocket bay withinside of Winskeage Island,<sup>1</sup> where wee ran ashoare.

Sworne before me Richard Parker Commission<sup>r</sup> the 24: 5: 1672

And addes that hee saw the Boate bulged before she was burnt.

Affirmed in Court upon his former Oath 31<sup>th</sup> 5<sup>mo</sup> 72

S. F. 1194.44

The Testimony of Edward Naylor aged 30 yeares or thereabouts & Thaddeus Makarty aged thirty three yeares or thereabouts Saith, meating with m<sup>r</sup> Naylor on the 21<sup>th</sup> of March last past at a place called Muspecky <sup>2</sup> both going on a trading voidage, wee concluded a partnership in trading next day wee sailed for Machias, where wee had the News of Oliver Duncombs' death, & alsoe of John Perkins being very Sick, & debilitated of his limbs, from thence wee made what hast wee could to him to Musquash Cove, & found him as aforesaide, wee tooke him onboard m<sup>r</sup> Naylor's Vessel & sometime after wee met Christopher Smith at Johns' River where saide Smith & Perkins had discourse about what goods saide Perkins had, which Smith pretended an jnterest in, the conclusion betwixt them was, that saide Smith was to pay Perkins his wages & the hire of o<sup>r</sup> vessell for eight dayes, & alsoe Perkins' Diett & attendance, which was seven weeks, the which Smith paide to m<sup>r</sup> Naylor & my selfe; the vallue that the mony amounted to, due

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<sup>1</sup> Winscal Point, probably identical with Schoodic Peninsula at the eastward side of Frenchmans Bay, Maine, is shown on the eighteenth-century editions of the English Coast Pilot for that region. See illustrations in our Publications, xxvii. There is a Wonsqueak Harbor on the modern government charts of Schoodic Peninsula.

<sup>2</sup> Moosepeak or Moosabec Reach, in eastern Maine.

to us, was to the best of o<sup>r</sup> knowledge about twelue or thirteen pounds paide us in Beaver at eight Shillings the pound; further saide Smith paide Perkins, Moose Skinns eleven & some Beaver, till Perkins declared upon Deck that hee was Satisfied for his wages & further saith not.

Sworne in Court . . . Jan<sup>y</sup> 31: 1672 as Attests Isaac Addington

S. F. 1194.31

The Deposition of Hudson Leverett <sup>1</sup> aged 32 yeares or thereabouts.

This Deponant testifieth & saith, that in the month of August last past, I heard m<sup>r</sup> William Waldren say hee would bee revenged of that cheating rogue Smith & that hee would spend one hundred pounds but hee would come up with him & m<sup>r</sup> Hincks his partner being with us, saide to mee in these words m<sup>r</sup> Leverett were it my business I would spend halfe that I was worth, but that I would bee revenged of him & m<sup>r</sup> Waldren saide hee would let him rott in goale & that hee would make Dice of his bones & farther Saith not.

Sworne in Court Nov<sup>r</sup> 2<sup>d</sup> 1672, as attests Isaac Addington Cler.

Smith was granted a review of the cases in the same court in November, 1672. See below, pp. 158, 163-4, 186, 193, 202.]

FITCH ags<sup>t</sup> WEST

Thomas Fitch, pl<sup>t</sup> ags<sup>t</sup> William West Defend<sup>t</sup> in an Accion of the case for carrying away his Serv<sup>t</sup> or Apprentice Daniell Battey without his knowledge & contrary to the will & minde of the saide Fitch, the s<sup>d</sup> West carrying away they saide Battey in the year 1668, whereby the plaintiffe is damnified the summe of fifty pounds or thereabouts for want of his saide Serv<sup>t</sup> or Apprentice & other due dammages according to attachm<sup>t</sup> dated July 23<sup>th</sup> 1672. . . . The Jurie . . . finde for the Defend<sup>t</sup> costs of Court. The pl<sup>t</sup> appealed from the judgm<sup>t</sup> of this Court to the next Court of Assistants, & accordingly the saide Thomas Fitch as principle in fifty pounds & John Lake & James Brading as Sureties in five & twenty pounds apeice acknowledged themselves jointly and severally bound to . . . prosecute his Appeale . . . [67]

Hope Allen, pl<sup>t</sup> ags<sup>t</sup> John Jennings Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July 19<sup>th</sup> 1672. The pl<sup>t</sup> withdrew his Accion.

GOULDING ags<sup>t</sup> HAUTHORNE

Peter Goulding, Attorney of Zech<sup>r</sup> Phillips Assigne of Will<sup>m</sup> Phillips pl<sup>t</sup> ags<sup>t</sup> John Hawthorne Defend<sup>t</sup> according to Attachm<sup>t</sup>

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<sup>1</sup> The son of Governor Leverett and father of President Leverett.

Dat. July 9<sup>th</sup> 1672. Noe deputation of the Constable appearing the process is not allowed.

STONE ags<sup>t</sup> FRANKS

Daniell Stone, Attourny of Joseph Eldridge pl<sup>t</sup> ags<sup>t</sup> John Francks Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July 11<sup>th</sup> 1672. Noe deputation of the Constable appearing the process is not allowed.

STONE & Comp<sup>a</sup> ags<sup>t</sup> FRANCKES

Daniell Stone & Comp<sup>a</sup> pl<sup>ts</sup> ags<sup>t</sup> John Francks Defend<sup>t</sup> in an Accion of the case for that the saide Franckes hath not given a true and just acco<sup>t</sup> according to his orders given him to proceede a Voiadge to the Barbados, but contrary thereto hath proceeded by which they are damnified in principle about one hundred pounds w<sup>th</sup> due dammages according to Attachm<sup>t</sup> Dat. July the 10<sup>th</sup> 1672. no deputation of the Constable appearing the process is not allowed.

STONE &<sup>a</sup> ags<sup>t</sup> FRANCKS

Daniell Stone & Comp<sup>a</sup> Owners of the Catch willing minde pl<sup>ts</sup> against John Franckes Defend<sup>t</sup> in an Accion of the case for withhold- ing a hh<sup>d</sup> Rumm w<sup>ch</sup> hee received vpon the acco<sup>t</sup> of the saide owners in Barbados & all other due dammages according to Attachm<sup>t</sup> Dat. July 10<sup>th</sup> 1672. . . . The Jury brought . . . finde for the Defend<sup>t</sup> costs of Court.

WILLIAMS ags<sup>t</sup> SMITH

John Williams, pl<sup>t</sup> ags<sup>t</sup> X<sup>to</sup>pher Smith Defend<sup>t</sup> in an Accion of the case for withholding a Debt of Seven pounds or thereabouts due for wages for his Service performed in the Sloope whereof the saide Smith is Ma<sup>r</sup> & due dammages according to Attachm<sup>t</sup> Dat. July 20<sup>th</sup> 1672 . . . the Jurie . . . finde for the Defend<sup>t</sup> costs of Court.

BONNER ags<sup>t</sup> ASHTON

John Bonner, pl<sup>t</sup> ags<sup>t</sup> Henry Ashton Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July 19<sup>th</sup> 1672 noe deputation of the Constable appearing the process is not allowed, costs granted the Defend<sup>t</sup> twelve Shillings fourpence.

Execution issued Aug<sup>o</sup> 5<sup>th</sup> 72 for 12<sup>s</sup> 4<sup>d</sup> [68]

[See third case below.]



WHARTON ags<sup>t</sup> HUDSON &<sup>a</sup>

Richard Wharton Ag<sup>t</sup> to Rob<sup>t</sup> Bendish & Comp<sup>a</sup> pl<sup>t</sup> ags<sup>t</sup> Cap<sup>t</sup> W<sup>m</sup> Hudson Thomas Joy & Rob<sup>t</sup> Owen Defend<sup>ts</sup> according to Attachm<sup>t</sup> Dat. May 21<sup>th</sup> 1672. The pl<sup>t</sup> vpon non appearance was non Suited.

SMITH ags<sup>t</sup> WILL<sup>ms</sup>

Christopher Smith, pl<sup>t</sup> ags<sup>t</sup> John Williams Defend<sup>t</sup>. The pl<sup>t</sup> withdrew his Accion.

ASHTON ags<sup>t</sup> BONNER

Henry Ashton, pl<sup>t</sup> ags<sup>t</sup> John Bonner Defend<sup>t</sup> in an Accion of the case for that the saide Bonner hath not proceeded on his intended Voiadge w<sup>th</sup> the Catch Recovery from the port of Liverpoole to Virginia, nor hath there landed the saide Ashton, neither hath there delivered the goods & Servants Shipped on the saide Catch by the saide Ashton according to bills of Loading & Agreem<sup>t</sup> w<sup>th</sup> other due dammages according to Attachm<sup>t</sup> Dat. July 20<sup>th</sup> 1672 . . . the Jurie . . . finde for the pl<sup>t</sup> Seventy pounds mony dammage & costs of Court w<sup>ch</sup> was fifty five Shillings.

Execution issued Aug<sup>o</sup> 5<sup>th</sup> 72 for 72<sup>li</sup> 15<sup>s</sup> 0<sup>d</sup>

[ Another case growing out of the voyage of the ketch Recovery, John Bonner master, the story of which is told in connection with the case of Peck v. Bonner (above pp. 31–36). Ashton was a young merchant of Liverpool. In November, 1671, he shipped a cargo of dry goods and provisions and a parcel of twelve servants for Virginia on the Recovery, and took passage on the vessel himself. According to the testimony of John Ireland, a seaman on the Recovery (S. F. 1341.36), one servant ran away at Liverpool, three more at the Isle of Man and one at Dublin, “beeing all of them discontented for want of victuall” (testified Francis Siddell, one of Lawton’s servants on the Recovery, S. F. 1341.32); “nor was it without reason . . . for there was great want of victualls for the pas-seng<sup>rs</sup> till wee came to Dublin.” Instead of sailing to Virginia as agreed, Captain Bonner took the Recovery to Fayal, where Ashton shipped some wine. The bill of lading follows (S. F. 1341.24):

Shipped by the grace of God in good order and wel-condicioned by me Henry Ashton of Liver poole in and upon the good Catch called the Recovery of Boston in New England whereof is master under God for this present voyadge John Bonner. And now riding att Anchor in the Rode of Fiall and by Gods Grace bound for Virginia, to say, one pipe four barrells of wine being marked and numbred as in the margent [ pipe R. L., barrells H. A ], and are to be dilivered in the like

good order and well conditioned at the aforesaide port of Virginia. (the dangers of the seas only Excepted) unto Henry Ashton or to his assignes, hee or they paying freight for the saide goods at forty Shillings per Tunn with primage and avarage accustomed, in wittnes whereof the master of the saide Catch hath affirmed to Three bills of loading all of this tenour and date, the one of which three bills being accomplished the other two to stand voyd.

And so god send the good Catch to her desired port in safety. Amen.

Dated in Fiall y<sup>e</sup> 15<sup>th</sup> Aprill 1672.

Vera Copia. Thos. Danforth. Cl.

From Fayal the Recovery proceeded to Boston, arriving May 25, 1672. Ashton was now short five servants, and much of his cargo. Ireland testified that the malt and cheese "seemed to be damnified the one beeing rotten the other weeuell eaten & musty by reason of the length of tyme wee were on the voyage beeing about the space of seuen months & also a Caske of dry goods belonging to said Ashton was wett in the hold as this deponent apprehends by stowing beeife & wine vpon it" (S. F. 1341.36).

Three days after landing, according to three witnesses (S. F. 1341.34 35), Ashton and Bonner made an agreement by which the latter was to deliver to Ashton his seven servants, 4 tons of goods, and about 54<sup>l</sup> in satisfaction for his damages. This agreement was not kept, and Ashton drew up the following bill of damages (S. F. 1341.28):

An Accompt & Estim[ate of the] Damage Henry Ashton hath [torn] Susteyned by the Ind[torn]worthy acting of John Bonn[torn] the katch Recovery. . .

	<i>li s d</i>
To Fiue men seruants which I shipt on board s <sup>d</sup> Catch to be transported to Virginia who by his Neglect run away all amounting to at Least . . .	60:00:00
To Wages for Robert Scfeild & Thomas Hurst whome hee employed as Cooks Seuen months by Turns . . . . .	07:00:00
To Bedding that his Seruants Lay in all the voyage . . . . .	01:00:00
To my Charges and Necessary Expences at all ports where he carried & deteyned mee . . . . .	10:10:00
To Damage in Cloth & fustians . . . . .	01:10:00
To Damage in Cheese . . . . .	01:10:00
To Damage in Mault . . . . .	10:00:00
To a Cradle Rug . . . . .	00:06:00
To a bill to Cut Cannes . . . . .	00:02:00
To Loss of tyme & Markett in Virginia whether I was by agreem <sup>t</sup> bound, beeing carried about from one port to another according to m <sup>r</sup> Bonners pleasure about the terme of fiue months, beeing from the 14th of Decemb <sup>r</sup> to y <sup>e</sup> 25 <sup>th</sup> of May ensuing Damnified at Least . . . . .	100:00:00
	<hr/> 191:18:00

All which the Said Henry Ashton doth humbly refer to the Honorable Court & Jurie to Judge & Determine.

Henry Ashton

. . . True Coppy. . . Attests Isaac Addington Cler.

The action followed, as recorded in the text; but that was by no means the end of this case. See below, p. 167.]

BRIGANDEN ags<sup>t</sup> TAILOR

Sarah Briganden, Attourney of Rob<sup>t</sup> Briganden pl<sup>t</sup> ags<sup>t</sup> Caleb Tailor Defend<sup>t</sup>. The pl<sup>t</sup> withdrew her Accion.

NORTON ags<sup>t</sup> MARSHALL

George Norton, pl<sup>t</sup> ags<sup>t</sup> Rob<sup>t</sup> Marshall Defend<sup>t</sup> in an Accion of the case for withholding a Debt of Seventy one pounds or thereabouts, or what shalbee made appear for his quarter part of a Vessell or pincke as by Articles of Agreem<sup>t</sup> vnder his hand & Seale, bearing date y<sup>e</sup> 2<sup>nd</sup> day of Septemb<sup>r</sup> 1670 & in Specie according to saide Articles or Covenant w<sup>th</sup> all due dammages according to Attachm<sup>t</sup> Dat. July 20<sup>th</sup> 1672. . . . The Jurie . . . finde for the Defend<sup>t</sup> Costs of Court.

[ See fourth case below.]

HUDSON ags<sup>t</sup> DAVIS

William Hudson, pl<sup>t</sup> ags<sup>t</sup> Thomas Davis of haverhill Defend<sup>t</sup> in an Accion of Debt of Ninety two pounds Seven Shillings nine pence due by bill & due dammages according to Attachm<sup>t</sup> Dat. May the 1<sup>st</sup> 1672. . . . [69] The Jurie . . . finde for the pl<sup>t</sup> Ninety two pounds Seven Shillings nine pence in currant pay w<sup>th</sup> the Merchant according to Bill & costs of Court.

IRELAND ags<sup>t</sup> BONN<sup>r</sup>

John Ireland, pl<sup>t</sup> ags<sup>t</sup> John Bonner Defend<sup>t</sup> in an Accion of the case for refusing to make paim<sup>t</sup> of eleven pounds one Shilling due to the saide Ireland for wages as a Seaman on the Catch Recovery of Boston from the 7<sup>th</sup> day of Novemb<sup>r</sup> An<sup>o</sup> 1671 to the thirteenth day of July 1672 at the rate of twenty seven shillings per month & all due dammages according to Attachm<sup>t</sup> Dat. July 13<sup>th</sup> 1672. . . . The Jurie . . . finde for the pl<sup>t</sup> nine pounds two Shillings mony damage & Costs of Court w<sup>ch</sup> was thirty seven Shillings.

Execution issued Aug<sup>o</sup> 5<sup>th</sup> 72 for 10<sup>li</sup> 19<sup>s</sup> m<sup>o</sup>

[ Another case growing out of the voyage of the Recovery. See above, pp. 31-36, 141-142.]

GIBSON ags<sup>t</sup> HEWS

Robert Gibson, pl<sup>t</sup> ags<sup>t</sup> George Hews Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. June 20<sup>th</sup> 1672, noe deputation of the Constable appearing the process is not allowed.

MARSHALL ags<sup>t</sup> GREENELAND &<sup>a</sup>

Robert Marshall, pl<sup>t</sup> ags<sup>t</sup> Henry Greeneland Walter Barefoote, & George Norton Defend<sup>ts</sup> according to Attachm<sup>t</sup> Dat. July 10<sup>th</sup> 1672. The pl<sup>t</sup> in failor of process was non Suited, & twenty eight Shillings Six pence costs granted the Defend<sup>t</sup>.

Execucion issued Aug<sup>o</sup> 6<sup>th</sup> 72 for 28<sup>s</sup> 6<sup>d</sup> m<sup>o</sup>

[ See fourth case above, and next below.]

Robert Marshall pl<sup>t</sup> ags<sup>t</sup> Henry Greeneland &<sup>a</sup> Defend<sup>ts</sup> in an Accion of the case for illegal & contrary to Law vexing the saide Marshall without cause of Accion & hindring the pinck Lenham's going to Sea vnder pretence of high dammage though noe cause soe to doe; w<sup>ch</sup> hath beene & is great dammage to the saide Marshall w<sup>th</sup> other due dammages according to Attachm<sup>t</sup> Dat. July 15<sup>th</sup> 1672. . . . The Jurie . . . finde for the Defend<sup>t</sup> costs of Court w<sup>ch</sup> was fifty two Shillings ten pence.

Execucion issued Aug<sup>o</sup> 6<sup>th</sup> 72 for 52<sup>s</sup> 6<sup>d</sup> m<sup>o</sup>

PLUMB ags<sup>t</sup> PARKE

John Plumb, pl<sup>t</sup> ags<sup>t</sup> Deacon Will<sup>m</sup> Parcks Defendant, in an Accion of the case vpon Acco<sup>t</sup> to the Vallue of thirty six pounds or thereabouts & due damages according to Attachm<sup>t</sup> Dat. July 25<sup>th</sup> 1672. . . . The Jurie . . . they finde for the Defend<sup>t</sup> Costs of Court. [70]

[ See below, p. 146.]

SHRIMPTON ags<sup>t</sup> LAKE &<sup>a</sup>

Samuell Shrimpton, Attourney of Alice Swift Sister & Executrix to the last will & Testam<sup>t</sup> of Thom: Miller deceased, pl<sup>t</sup> ags<sup>t</sup> John Lake & Thomas Blighe Administrators to the saide Miller Defend<sup>ts</sup> in an Accion of the case for denying the saide Attourney possession of the houses Lands & goods & monies & other Estate, w<sup>ch</sup> saide Thomas Miller died possessed of w<sup>th</sup> other due dammages according to



Attachm<sup>t</sup> Dat. July 25<sup>th</sup> 1672. . . . The Jurie . . . finde for the pl<sup>t</sup> three hundred pounds dammage in mony, or the Estate in controversy according to Inventory & costs of Court.

#### KELLOND ags<sup>t</sup> HUDSON

Thomas Kellond, pl<sup>t</sup> ags<sup>t</sup> Cap<sup>t</sup> Will<sup>m</sup> Hudson Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July 25<sup>th</sup> 1672. noe deputacion of the Constable appearing the process is not allowed.

#### JOY ags<sup>t</sup> WOODMANCY

Thomas Joy, pl<sup>t</sup> ags<sup>t</sup> John Woodmancy, Defend<sup>t</sup> according to Attachm<sup>t</sup> being continued from the last County Court. The pl<sup>t</sup> withdrew his Accion.

Thomas Joy, pl<sup>t</sup> ags<sup>t</sup> John Woodmancy Defend<sup>t</sup> according to Attachm<sup>t</sup> being continued from the last County Court. The pl<sup>t</sup> withdrew his Accion.

[ See above, cases of Woodmancy v. Joy and Baker v. Joy, pp. 45, 64, 101, 103, 129, 134, and second entry below.]

#### HOUGHAM discharg<sup>d</sup>

Osbard Hougham, complained of by Cap<sup>t</sup> John Allen for his abusive carriage to him as collector of the Custom's. M<sup>r</sup> Hougham required a Jurie, w<sup>ch</sup> was granted & . . . the Jurie . . . finde him not guilty.

#### Auditt of WOODMANCY'S acco<sup>ts</sup>

The Court orders & appoints m<sup>r</sup> Richard Cooke & Cap<sup>t</sup> Thomas Lake to Audit the Acco<sup>ts</sup> betweene John Woodmancy & Thom. Joy & to make theire return to this Court.

[ See second entry above, and below, p. 149.]

#### LINCOLNE sworne sealer for Hingham

Benj<sup>a</sup> Lincolne was Sworne Sealer of Weights & measures for the towne of Hingham.

#### NICHOLLS discharged from Training

Adam Nicholls, by reason of his age is discharged from ordinary Trainings.

## MILLS his Licence

John Mills of Brantery had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> & to Sell Beere & wine till April next.

Order to Cap<sup>t</sup> HUDSON

The Court orders that Cap<sup>t</sup> Will<sup>m</sup> Hudson send for his Serv<sup>t</sup> John Shepard to appear at this Court on thursday or friday next. [71]

## [PLUMB v. PARKE]

The Court admits John Plumb to enter an Accion ags<sup>t</sup> Deacon Will<sup>m</sup> Parcke sub formā pauperis.

[ See above, p. 144.]

## HUDSON to FREACKE

Cap<sup>t</sup> Will<sup>m</sup> Hudson came into Court & acknowledged a judgm<sup>t</sup> ags<sup>t</sup> himselfe & Estate to M<sup>r</sup> John Freacke for fifty five pounds Seven Shillings & one penny in mony.

Cap<sup>t</sup> Will<sup>m</sup> Hudson, came into Court & acknowledged a judgm<sup>t</sup> ags<sup>t</sup> himselfe & Estate to m<sup>r</sup> John Freacke for Twenty three pounds four Shillings & ten pence in mony.

## Order to BUMSTEED

The Court orders that Jeremiah Bumsteede, deliver vp Paul Gilford's Indenture & his Clothes to the Governo<sup>r</sup>

## HOWARD's Sentence

The Court Sentanceth Will<sup>m</sup> Howard to pay ten groats in mony for his Excessive drincking.

George Hethcott for his contemp<sup>t</sup> in open Court stands committed.

## DUDLY's Freedom

M<sup>r</sup> Joseph Dudley, tooke the Oath of Freedom of this Colony.

## Several of Hingham made free

Thomas Chubbuck, Thom: Lincolne, Joshua Beale, Benj<sup>a</sup> Bate, Sammuell Bate, Onesephirus Marsh, Joseph Beale, all tooke the Oath of Freedom of this Colony. Matthias Bridges of Hingham also tooke the Oath.

## Discharge from Training

On Certificate from Cap<sup>t</sup> Joshua Hubbard of Hingham: the Court discharged Isaac Pits & Nathan<sup>11</sup> Chubbuck from ordinary Trainings.

On certificate from Cap<sup>t</sup> James Oliver the Court discharged Edward Goodwine, Simon Rogers & Abraham Hagborne from ordinary Trainings.

## SAMM: HIDE, Indian, Sentanced

Sammuell Hide, an Indian, convict for breaking into M<sup>r</sup> Meades House at Roxberry on y<sup>e</sup> 15<sup>th</sup> of May 1672, confessed in Court that hee was at M<sup>r</sup> Meades that day, & that hee strove w<sup>th</sup> saide Meade. The Court Sentanceth him to bee whip<sup>t</sup> w<sup>th</sup> thirty stripes Severely laide on, & to pay the charge of Witnesses & fees of Court & prison & then is discharged & if hee bee seene in Roxberry after his discharge hee is to bee taken by the Constable & to bee whip<sup>t</sup> w<sup>th</sup> twenty Stripes.

## JONATHAN BIRCH Sentanced

Jonathan Birch, bound over to this Court for his contemptuous carriage to authority of w<sup>ch</sup> hee was convict in open Court. The Court Sentanceth him to bee whip<sup>t</sup> w<sup>th</sup> twenty Stripes or to pay five pounds in mony fine to the County & fees of Court Standing committed till the Sentence bee performed. [72]

## GOLD Sentanced

Thomas Gold, being accused for Stealing. Owned in Court that hee stole from Elisha Bennett in mony twelve pounds & in clothes to the Vallue of four pounds fifteen Shillings. The Court Sentanceth him to pay to the saide Elisha Bennett, the Summe of fivety pounds five Shillings being that threefold restitution the Law requireth what is restored being part of the Same & to bee whipt w<sup>th</sup> ten Stripes paying fees of Court Standing committed till the Sentence bee performed.

## COWESET Indian Sentanced

Cowesett Indian, convict for his abusive carriage to John Bennett, in coming into his house contrary to his minde & demanding drinke there, throwing Severall Stones at the said John Bennett & pulling him by the haire. The Court Sentanceth him to haue his

haire cut round close of from his head & to bee whip't w<sup>th</sup> thirty Stripes, paying fees of Court & prison is discharged, & if hee bee founde in Boston after his discharge hee is to bee taken by the Constable & to bee whip't w<sup>th</sup> twenty Stripes.

#### JOHN Indian Sentenced

John Indian, convict for breaking into the house of Sammuell King of Weimoth. The Court Sentanceth him to haue his haire cut round close of from his head & to bee whip't w<sup>th</sup> thirty Stripes & pay the charge of Constable & witnesses, & paing fees of Court & prison is discharged. & if hee bee founde in Weimoth after his discharge hee is to bee taken by the Constable & to bee whip't w<sup>th</sup> twenty stripes.

#### JOHNSON & MORE Sentenced

Abigaile Johnson Senio<sup>r</sup> & Naomi Moore, convict for giving Entertainm<sup>t</sup> to persons drincking in their houses at vnseasonable times of the night. The Court Sentanceth them, to give in twenty pounds bond apeice for the good behavior & pay fees of Court. Standing committed till the Sent<sup>a</sup> bee performed.

#### Order to Deacon ALLEN & DRURY

The Court orders & appoints Deacon Henry Allen & Heugh Drury to veiw & measure the worke done by Thom Joy for John Woodmancy & to make return thereof to this Court.

#### Hull petition answered

In Answer to the petition of severall of the Towne of Hull w<sup>th</sup> reference to the Commission<sup>rs</sup> of Hingham. The Court orders that due notice bee given to the s<sup>d</sup> Comissioners to appear at Octob<sup>r</sup> Court next. to answer their complaint. [73]

#### Order about m<sup>r</sup> ALLEN's estate

In Answer to the motion of the Administrato<sup>r</sup> to the Estate of the late Rev<sup>d</sup> M<sup>r</sup> John Allen of Dedham deceased. The Court orders that the Administrato<sup>rs</sup> take care of that part of the Estate, set forth to M<sup>r</sup> John Allen the eldest sone to secure the same from dammage & to emprove it for his best advantage till farther Order.



## Order about JOHN SHEPARD

Compl<sup>a</sup> being made by Andrew Shepard, concerning the State of his brother Jo<sup>n</sup> Shepard Serv<sup>t</sup> to Cap<sup>t</sup> Will<sup>m</sup> Hudson, both ma<sup>r</sup> & Serv<sup>t</sup> appeared before the magistrates & by consent jointly referred the determinacion of the case to them vpon which The Court orders that saide Cap<sup>t</sup> Hudson forthw<sup>th</sup> deliver up the saide Serv<sup>t</sup> John Shepard to his brother and cloath him w<sup>th</sup> one Suite of good Apparrell besides w<sup>t</sup> hee already hath to the approbacion of m<sup>r</sup> Edward Ting or in failor thereof to pay five pounds in mony.

## HARRIS sentenced

The Court Sentanceth John Harris to pay three pounds to Owen Joanes for his and his wives abuseing of him & Order that the saide Joanes paying to his saide ma<sup>r</sup> Harris w<sup>t</sup> hee is justly indebted to him bee released from his saide ma<sup>r</sup> Service & the Select men of Boston are to provide a meete Service for him.

Execucion issued for 3<sup>li</sup> 12<sup>s</sup> x<sup>br</sup> 1672.

## DYER's licence

Thomas Dyer of Weimoth had his licence renewed to keepe a house of publike Entertainm<sup>t</sup> for the yeare Ensuing.

## WOODMANCIES &amp; JOYES Audit

Deacon Henry Allen, Hugh Drury & Cap<sup>t</sup> Will<sup>m</sup> Davis were chosen in Court by John Woodmancy & Thomas Joy to overlooke & ajust the Acco<sup>ts</sup> presented by the saide Joy ags<sup>t</sup> John Woodmancy & all covenants that have beene made between them w<sup>ch</sup> the Court allowed of.

[ See above, p. 145.]

## HURLO Sentenced

Morto Hurlo, being bound over to this Court for his wounding of an Indian. The Court Sentanceth him (vpon his owning the fact but saide it was accidentall) to pay for the cure & fees of Court.

## Order to THOM. SMITH concern. SARAH BLACKLOCK

Sarah Blacklock, being brought out of England this yeare by Thomas Smith Ma<sup>r</sup> of the Sea Flower & compl<sup>a</sup> being made to the

Magistrates, that Shee had confessed in the ship she had beene w<sup>th</sup> Childe in England by one Henry Saffery a Dutchman, who shee saide was her Sweete heart & that she went w<sup>th</sup> Childe fifteen or sixteen weeks & then miscarried of a man childe w<sup>ch</sup> her Father's maide buried privately in his garden w<sup>ch</sup> was in Leedes in the County of Yorke, vpon w<sup>ch</sup> the Court sent for her & she owned the same in Court. Wherevpon the Court orders that saide Thomas Smith return the saide Sarah Blacklock [74] for England w<sup>th</sup> the Records of this Court concerning her & that in the meane time she continue in prison, saide Smith to pay the prison charges. & in case the saide Smith refuse soe to transport her, or to take order for the same the charge for her transportacon as aforesaide is to bee levied by Execucion on the saide Smith's Estate.

[ See above, p. 128, and below, pp. 164-5, 185, 189, 237.]

#### MASON admonished

Pete Mason, being pursued by hue & cry vpon suspicion of stealing a horse. Vpon the hearing of the case the Court Sentanceth him to bee admonished in open Court & pay fees of Court. & they leaue the Owner of the horse to his course in Law ags<sup>t</sup> him.

#### MIDDLETON's Sentence

Will<sup>m</sup> Middleton, being bound over to this Court for Speaking words that gaue Suspicion of his being instrumentall in the late fire at Boston; the Court Sentanceth him to give ten pounds bond w<sup>th</sup> two Sureties in five pound apeice for the good behavio<sup>r</sup> & accordingly the saide Will<sup>m</sup> Middleton as principall in ten pounds & John Blake & Arthur Mason as Sureties in five pounds apeice acknowledge themselves jointly & Severally bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that Will<sup>m</sup> Middleton shalbee of good behavior & appeare at the next Court of this County.

#### ROLFFE bound over to Court of Assist.

Edward Rolffe, being committed on Suspicion of his having two wives is bound over to the Court of Assistants & the Court accepts his one bond of one hundred pounds.

[ Rolfe was acquitted in the higher court, September 7, 1672, S.F. 1139, printed in Records of the Court of Assistants, iii. 222.]

## ATHERTON's Sentence

Jonathan Atherton, bound over to this Court for his wounding of an Indian w<sup>th</sup> his Sword; w<sup>ch</sup> hee owned hee did vpon provocation given him by the Indian. The Court Sentanceth him to defray all the charges about the cure of saide Indian if it bee not already done & disenable him for wearing a Sword during his continuance in this Colony, or till this Court take farther order. & to pay fees of Court.

## ATHERTON's discharge of bonds

Vpon due proclamacion made Jonathan Atherton is discharged from his bonds of good behavio<sup>r</sup>

## DOGGET &amp; NICHOLLS discharge

Vpon like proclamacion. Jonathan Nicholls & Henry Dogget are discharged from their bonds of good behavior.

## MEHETABLE SHEAFE's Guardian

Mehetable Sheafe, made choice of m<sup>r</sup> Thomas Brattle for her Guardian w<sup>ch</sup> hee accepted & and the Court allowed of.

## FOSTER's licence

John Foster, of Dorchester had a licence granted him to retaile Strong waters of his one distilling. & the saide John Foster as principall in five pounds & Hopestill Foster jun<sup>r</sup> & Ephraim Searle as Sureties in 50<sup>s</sup> apeice acknowledged themselves bound . . . [75]

At a Speciall Court held at Boston August 26<sup>th</sup> 1672 called at the Request of Henry Loaton Merchant.

## Present

RI: BELLINGHAM Esq<sup>r</sup> Gov<sup>r</sup> JOHN LEVERETT Esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup>  
EDW. TING Esq<sup>r</sup>

## Jurie of Trialls Sworne

m<sup>r</sup> Simon Linde  
James Whetcomb  
Joseph Dudson  
Nathan<sup>ll</sup> Greene

X<sup>to</sup>pher Clarke  
Anth<sup>o</sup> Checkly  
Samm: Scarlett  
August<sup>n</sup> Lyndon

Will<sup>m</sup> Parcke  
John Stebbins  
Thom: Tileston:  
Enoch Wiswall

## [LAWTON v. BONNER]

Henry Loaton plaint. ags<sup>t</sup> John Bonner Defend<sup>t</sup> in an Accion of the case for that hee the saide Bonner doth withhold & vnjustly detaine from him the saide Loaton his part of the whole Effects produce & profit, whither in goods or Servants & an acco<sup>t</sup> of a Voiadge or Voiadges made w<sup>th</sup> the Catch Recovery for his one and severall other man theire Acco<sup>t</sup> w<sup>th</sup> him in company from Boston to Virginia & from thence to Barbadoes & from thence back againe to Virginia & from thence for England & alsoe for that the saide Bonner hath neglected & refused as he was master to saile w<sup>th</sup> the said Catch from Liverpoole & other places according to the order of the saide Loaton as merchant, according to agreement, but on the contrary the saide Bonner hath made many and vnreasonable delaies; loosing many faire oppertunities of winde & weather; & at last in a wilfull & clandestine manner, ran or went away w<sup>th</sup> the aforesaide Catch, from the port of Dublin in Ireland & left him the saide Loaton there behinde contrary to his will & order & finally for that the saide Bonner since his arrivall in New England hath disposed of the saide Loaton's goods, Chest & wearing apparrell & writings according to the saide Bonner's will & pleasure, still refusing to deliver or give him saide Loaton an Acco<sup>t</sup> thereof w<sup>th</sup> all due dammages according to attachm<sup>t</sup> Dat. August 21<sup>th</sup> 1672. . . . The Jurie . . . finde for the plaintiffe that the Defendant deliver vnto the plaintiffe his quarter part of the Catch Recovery in good order and repaire w<sup>th</sup> one quart<sup>r</sup> part of all her appurtenances; and deliver alsoe to the plaintiffe his four Servants. Viz<sup>t</sup> Francis Sciddall, Francis Stafford, John Hokesey & James Jarret; and alsoe doe give a true acco<sup>t</sup> vpon Oath & the produce thereof of a parcell of Tobacco, porke, Tar & pease which the plaintiffe shipped vpon the saide Catch in Virg<sup>a</sup> for Barbados and consigned to the Defendant, as per bill of Loading, and alsoe that the Defendant pay vnto the plaintiffe Fifty pounds in mony for the damage Sustained in leaving him behinde in Ireland w<sup>th</sup> costs of Court. The premisses to bee done & performed by the Defend<sup>t</sup> vnto the plaint. within thirty daies next Ensuing or else that the Defendant pay vnto the plaintiffe two hundred twenty eight pounds in mony w<sup>th</sup> costs of Court w<sup>ch</sup> came to eight pounds fourteen Shillings.

Execucion issued for 236<sup>li</sup> 14<sup>s</sup> mony Septemb<sup>r</sup> 30<sup>th</sup> 1672.



[For the voyage of the ketch *Recovery*, and Henry Lawton's connection with it, see case of *Peck v. Bonner*, above, pp. 31-36. The *Recovery*, John Bonner master, arrived in Boston, May 25, 1672. Lawton, who had been left behind in Dublin, eventually found passage to Boston. His case was tried by a special court consisting of the Governor and two Magistrates, summoned to sit between sessions of the County Court "for the more speedy dispatch of all Causes which shall concern Strangers, who cannot without prejudice, stay to attend the ordinary Courts of Justice" (Act of 1639, in *Lawes and Libertyes*, 1672 ed., title *Courts*, sec. 8). At the next session of the General Court, in October, 1672, this act was repealed and it was provided that a stranger could sue an inhabitant "in any of our Courts," wherever sitting. Whether there was any connection between this case and the repeal does not appear.

Bonner, for want of wherewithal to satisfy this judgment, was committed to Boston jail on October 1, 1672, whence he initiated another counter-suit against Lawton, for which see below, pp. 165-166.] [76]

LOATON cont<sup>a</sup> SCARLET

Henry Loaton, Assignee of John Saffine pl<sup>t</sup> contra John Scarlett Defend<sup>t</sup> The Court not being granted for any Such Accion the process is not allowed.

At a County Court held at Boston October 29<sup>th</sup> 1672.<sup>1</sup>

Present

RI: BELLINGHAM Esq<sup>r</sup> Gov<sup>r</sup>

EDW. TING Esq<sup>r</sup> Assist.

JO<sup>n</sup> LEVERETT Esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup>

W<sup>m</sup> STOUGHTON Esq<sup>r</sup> Assist<sup>t</sup>

Grand jury the same with the form<sup>r</sup> Court.

Jury of Tryalls Sworne.

Leiv<sup>t</sup> John Smith

John Pelton

Nathan<sup>ll</sup> Whiting

Joseph Swet

John Willington

Andrew Duing

Benj<sup>a</sup> Thurston

Joseph Penniman

John Partridge

Henry Bowen

John Thaxter

John Shaw

[WHARTON v. HUDSON et al]

Richard Wharton agent to Robert Bendish & Comp<sup>a</sup> pl<sup>t</sup> against Capt<sup>a</sup> William Hudson, Thomas Joy & Robert Owen Defend<sup>ts</sup> according to Attachment vpon the acknowledgm<sup>t</sup> of judgment the pl<sup>t</sup> with drew his Accion.

[WHARTON v. HOLLINGSWORTH]

Richard Wharton, pl<sup>t</sup> ags<sup>t</sup> Will<sup>m</sup> Hollingsworth Defend<sup>t</sup> in an Accion of the case for withholding from him y<sup>e</sup> Summe of Fifteen pounds thirteen Shillings & two pence or thereabouts in mony, being the ballance of their Acco<sup>ts</sup> with due dammages according to Attachm<sup>t</sup> Dat. this 10<sup>th</sup> of 8<sup>br</sup> 1672. . . . The jury . . . finde for the pl<sup>t</sup> Fifteen pounds nine Shillings & five pence dammages & costs of Court being 20 sh<sup>1</sup>

Execucion issued Aprill: 22<sup>d</sup> 1674 for 16<sup>li</sup> 9<sup>s</sup> 5<sup>d</sup>

VSHER cont<sup>a</sup> TIMBERLACK

John Vsher, attourny of Will<sup>m</sup> Coddington pl<sup>t</sup> ags<sup>t</sup> Will<sup>m</sup> Timberlack Defend<sup>t</sup> in an Accion of the case for non paiement of Eighty eight pounds in mony due by Agreem<sup>t</sup> made with the saide Coddington at Roade jsland bearing date the twentieth day of March, 16<sup>71</sup><sub>72</sub>, & all

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<sup>1</sup> Beginning at this point the records are in the handwriting of Isaac Addington, Freegrace Bendall having taken his departure for Madeira according to the permission granted by the Court, above, p. 121.

other due dammages according to Attachm<sup>t</sup> Dat. October 1, 1672. . . .  
The Jury . . . finde for the pl<sup>t</sup> Sixty eight pounds dammage mony  
& costs of Court; being 22 sh<sup>1</sup> 6<sup>d</sup>

Execucion issued Nov<sup>r</sup> 6: 1672 for 69<sup>li</sup> 2<sup>s</sup> 6<sup>d</sup> m<sup>o</sup>

#### GOULDING cont<sup>a</sup> DOWN

Peter Goulding attourney of John Figg pl<sup>t</sup> ags<sup>t</sup> Thomas Down & Susanna his wife, Executrix to the last will & Testam<sup>t</sup> of Peter Hubbard deceased, Defend<sup>ts</sup> according to Attachm<sup>t</sup> The pl<sup>t</sup> withdrew his Accion, costs granted the Defend<sup>t</sup> 41 sh<sup>1</sup> 10<sup>d</sup>

#### CLARKE cont<sup>a</sup> WEEDEN

John Clarke, pl<sup>t</sup> ags<sup>t</sup> Joseph Weeden Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aug<sup>o</sup> 7<sup>th</sup> 1672. The pl<sup>t</sup> vpon non appearance was non Suited.

#### [77] SMITH cont<sup>a</sup> CARRINGTON

Matthias Smith, plaint. contra Edward Carrington Defend<sup>t</sup> in an Accion of the case for not Learning & instructing him fully in the trade of a Turner according as by indenture hee is bound, but Employing him in other Servile work; whereby the saide Mathias is damnified for want of being perfected in the Trade of a Turner to the dammage of twenty pounds or thereabout & other due dammages according to Attachm<sup>t</sup> Dated 17<sup>th</sup> 8: 1672. . . . The jury . . . founde for the Defend<sup>t</sup> costs of Court being 19 sh<sup>1</sup> 2<sup>d</sup>

#### BLIGHE cont<sup>a</sup> KEENE

Thomas Blighe, plaint. cont<sup>a</sup> John Keene adm<sup>r</sup> to the Estate of William Oates deceased Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated Septemb<sup>r</sup> 30<sup>th</sup> 1672 in failor of process the plaint. was Non Suited.

#### STODDARD &<sup>a</sup> cont<sup>a</sup> ROCK

Anthony Stoddard, guardian to Thomas Robinson W<sup>m</sup> Bartholmew guardian to James Robinson & Deacon W<sup>m</sup> Parcks guardian to Joseph Robinson plaints. cont<sup>a</sup> Joseph Rock, adm<sup>r</sup> to the Estate of Mr John & M<sup>rs</sup> Martha Coggan, Executrix to M<sup>r</sup> John Coggan Defend<sup>t</sup>. This Accion was continued till the next Court by consent of parties.

[See above, p. 109, and below, pp. 200, 217, 241.]

WHETCOMB cont<sup>a</sup> GOOSE

James Whetcomb, plaint. cont<sup>a</sup> Capt<sup>a</sup> William Goose Defend<sup>t</sup> in an accion of the case for withholding the Summe of one hundred & forty pounds current mony of New England due by bond under his hand and seale bearing date Janu<sup>r</sup> 9<sup>th</sup> 1671. with other due dammages according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 24<sup>th</sup> 1672. . . . The Jury . . . found for the plaint. one hundred & forty pounds N. England mony due by bond & Costs of Court, being 33 sh<sup>l</sup> 4<sup>d</sup>

Execucion issued xb<sup>r</sup> 19<sup>th</sup> 1672 for £141. 13: 4: mony.

FRENCH cont<sup>a</sup> TING

Philip French Attourny of Sammuell & Benjamin Sute Plain<sup>t</sup> cont<sup>a</sup> Jonathan Ting Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. 19<sup>th</sup> 8<sup>br</sup> 1672. The Plain<sup>t</sup> withdrew his Accion.

*Idem*

Phillip French, Attourny of Thomas Firman Plain<sup>t</sup> cont<sup>a</sup> Jonathan Ting Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. 8<sup>br</sup> 29<sup>th</sup> 1672. The plain<sup>t</sup> withdrew his Accion.

CROWNE cont<sup>a</sup> SPRAGUE

Colon<sup>ll</sup> William Crowne Plain<sup>t</sup> cont<sup>a</sup> Jonathan Sprague Defend<sup>t</sup> in an accion of the case for his illegall taking & riding his horse without leaue from the saide Collonell sometime in the last august [78] & soe wronging the saide horse, whils't hee was on the horseback that hee received a great & dangerous wound with a Syth never like to bee thoroughly recovered, whereby the saide Coll: is damnified to the vallue of five pounds & for which offence the law gives treble dammage & other due dammages according to Attachm<sup>t</sup> Dat. 7: 8: 1672 . . . the jury . . . founde for the Defend<sup>t</sup> Costs of Court, the Magistrates sent the jury out againe & in the interim the plaintiffe withdrew his Accion the parties agreeing severally to beare their owne charges & the writings to remaine on file.

MORE cont<sup>a</sup> JONES

Thomas More, plaintiffe against William Jones Defend<sup>t</sup> in an Accion of the case for non paiment of five hundred twenty & three peices of eight & three quarters in Bilboa due for freight of five hun-



dred twenty three quantalls three quarters of Fish as per bill of Loading appeares & due dammages according to Attachm<sup>t</sup> Dated October 22<sup>th</sup> 1672 . . . the jury brought in theire Verdict. The saide More having owned in Court the paiment of freight in full vpon gold Acc<sup>t</sup> in Bilboa wee finde for the plaintiffe as due vpon plate Acco<sup>t</sup> forty nine peeces of eight at eight rialls per peece, six rialls & four pence & costs of Court. William Jones appealed to the next Court of Assistants and the said Jones as principle in twenty four pounds & Capt<sup>a</sup> Thomas Savage & m<sup>r</sup> Samuell Walker as Sureties in twelve pounds apeice acknowledged themselves . . . bound to . . . prosecute his appeale . . .

[Writ, return, and bond are in S. F. 1172.1. Bill of lading (S. F. 1172.2) follows:

Shipped by the grace of God in good order & well conditioned by William Jones in & vpon the good Ship cald the Supply of Boston whereof is master under God for this present Voiadge Thomas More & now rideing at ankor in the roade of Boston & by God's grace bound for Bilbo to say five hundred twenty three quantalls & three quarters of Merchantable Fish, it being for the account of William Jones & company, being marked & Numbred as in the Margent & are to bee delivered in the like good order & well conditioned at the aforesaide port of Bilboa (the danger of the Seas onely excepted) unto M<sup>r</sup> William Jones or in his absence unto M<sup>r</sup> Richard Acklen or to theire assignes, hee or they paying freight for the said goods, Eight rialls plate per quant. to bee paide in peeces of Eight with primage<sup>1</sup> & avarage accustomed. In witness thereof the master or Purser of the saide Ship hath affirmed to three bills of Lading all of this tenour & date, the one of which three bills being accomplished the other two to stand voide And soe God send the good Ship to her desired port in safety. Amen. Dated in Boston y<sup>e</sup> 2 August: 1672

The quantity & quality not knowne

Tho: More

Endorsed. Received the 13<sup>th</sup> October 1670. . . .

M<sup>r</sup> Thomas More owned in Court y<sup>e</sup> 30<sup>th</sup> 8<sup>br</sup> 1672 that hee had received his full freight in consideracion of the within mencioned bill, onely received peices of Eight at nine Rialls whereas hee should have received them at Eight

As Attests Isaac Addington

Richard Way, attorney for Thomas Moore, entered the following "Replication to M<sup>r</sup> W<sup>m</sup> Jones his Reasons of Appeal" (S. F. 1172.3):

Secondly, whereas y<sup>e</sup> Plain<sup>t</sup> argues y<sup>t</sup> it was in his Liberty to pay in perue p<sup>es</sup> w<sup>ch</sup> he p<sup>r</sup>sums to affirm Curr<sup>tt</sup> money of Spain at 8 Rialls plate p<sup>r</sup> peice, but had he don the world wou'd haue seen a designed peice of Fraudulence, For as much as y<sup>t</sup> is y<sup>e</sup> most deceptfull Coyn in being; And as m<sup>r</sup> Jones Urgeth y<sup>e</sup>

<sup>1</sup> "Due for primage 5<sup>s</sup> 7<sup>d</sup>" in margin.

paym<sup>t</sup> of Choice waity money, to w<sup>ch</sup> y<sup>e</sup> defend<sup>ts</sup> answer is, that what money was by him Reced, was but Barely According to obligation at 8 Rialls y<sup>e</sup> peice of Eight.

Apparently the appeal was not allowed.]

#### WALDREN cont<sup>a</sup> SMITH

William Waldren adm<sup>r</sup> of or to the Estate of Oliver Duncomb deceased plaintiffe against Christopher Smith Defend<sup>t</sup> in an accion of Reveiw of a judgment granted the saide Smith at a County Court held at Boston on the 30<sup>th</sup> july last. on a case there tryed & all other due dammages according to Attachm<sup>t</sup> Dat: August: 2: 1672 . . . the jury . . . founde for the Defend<sup>t</sup> costs of Court. [79]

[See next case.]

#### WALDREN cont<sup>a</sup> SMITH

William Waldren plaint. contra X<sup>topher</sup> Smith Defend<sup>t</sup> in an Accion of Reveiw according to Attachment Dat. Aug<sup>o</sup> 2: 1672 . . . The jury . . . founde for the Defend<sup>t</sup> costs of Court.

[See above, p. 135, and below, pp. 163-4. Writs and return for this case are in S. F. 1194, 1-8.]

#### CALLEY cont<sup>a</sup> WARREN

Joseph Calley, plaint. cont<sup>a</sup> Humphrey Warren Defend<sup>t</sup> in an Accion of the case vpon Acco<sup>t</sup> to the Vallue of Sixty six pounds or thereabouts & due dammages according to Attachment Dat. Octob<sup>r</sup> 7<sup>th</sup>: 1672. . . . The Jury . . . founde for the Defend<sup>t</sup> Costs of Court.

#### PRATT cont<sup>a</sup> LORINGS

Timothy Pratt, Attourney of Josiah Cooper adm<sup>r</sup> to the Estate of Anthony Cooper & Francis his wife deceased plaint. cont<sup>a</sup> Thomas & John Loring, adm<sup>rs</sup> to the Estate of Thomas Loring deceased Defend<sup>ts</sup> according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 1672. The Accion being called & partly heard the plaintiffe withdrew his Accion.

#### SPENCER cont<sup>a</sup> THOMAS

Roger Spencer plaint. cont<sup>a</sup> Alice Thomas Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Octob. 26<sup>th</sup> 1672. The plaint in failor of process was Non Suited.

JACOB cont<sup>a</sup> JOY

John Jacob, plaint. cont<sup>a</sup> Thomas Joy Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 23<sup>th</sup> 1672. The plaint. withdrew his Accion.

KEENE cont<sup>a</sup> BLIGHE

John Keene, plaint. cont<sup>a</sup> Thomas Blighe Defend<sup>t</sup> in an Accion of the case for that the saide Thomas Blighe doth deteine from the saide Keene & Hannah his wife a Negroe boy by name James of the saide Keen's & Hanna his wife or to them belonging as a gift or Legacy given to the saide Keen's wife by William Oates deceased, w<sup>th</sup> other due dammages according to Attachm<sup>t</sup> Dat: 22: 8: 1672. . . . The Jury . . . founde for the plaint. the Negroe boy & costs of Court or that the Defend<sup>t</sup> pay the plaint. thirty pounds in Mony & costs of Court 28<sup>s</sup> 4<sup>d</sup>

Execucion issued 28<sup>th</sup> Nov<sup>r</sup> 1672

CALLEY attourny of THOMAS cont<sup>a</sup> SPENCER

Joseph Calley attourny of Alice Thomas plaint. cont<sup>a</sup> Roger Spencer Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Octob<sup>r</sup> 1: 1672. The plaint. in failor of process was non Suited.

HEWS cont<sup>a</sup> LOUE

Joshua Hews junio<sup>r</sup> pl<sup>t</sup> cont<sup>a</sup> Richard Love Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Octob<sup>r</sup> 10<sup>th</sup> 1672. The plaint. withdrew his accion. [80]

WOODE cont<sup>a</sup> CHANTRELL

Alexander Wood, plaint. cont<sup>a</sup> John Chantrell Defend<sup>t</sup> in an Accion of the case for overrunning & sinking of a Fishing Shallop, being at an ankor neere Cape Cod whereby the plaintiffe is damnified to the Vallue of four score pounds or thereabouts in mony & due dammages according to Attachm<sup>t</sup> Dated Octob<sup>r</sup> 17<sup>th</sup> 1672. . . . The Jury . . . founde for the plaint. forty two pounds thirteen Shillings & ten pence in mony dammage & costs of Court. the Defendant appealed to the next Court of Assistants: and the saide John Chantrle as principall in Eighty pounds & James Whetcomb & Nathaniell Davenport as Sureties in forty pounds apeice acknowledged themselvs bound . . . that the saide Chantrell shall prosecute his Appeale from the judgment of this Court at the next Court of Assistants to Effect.

[One September night in 1672 the fishing shallop Hopewell, Alexander Wood master, was lying at anchor off Cape Cod. The men were busy on deck splitting and salting mackerel. A larger vessel bore down upon them suddenly, and ran them under water. The shallop was lost, with two lives and all the gear. The survivors were picked up by the vessel which had run them down, the ketch True Love, John Chantrell master, bound from Barbados to Boston. Captain Chantrell was haled before Deputy-Governor Leverett, whose original record of the examination (S. F. 1163.7) follows:

John Chanterling master of a ketch being brought before me vpon 16.7<sup>br</sup> 1672 & Complaind of for Runing aboard a shallop rideing of at Cape Cod & ran the boate downe by reason wherof the boate & fish weare lost & twoe men viz ware drowned & the boats master in Great hazard; the master John Chantry owned the fact but sayth he ordered to looke out & had seven men vpon the decke & being in the evening & fresh wynd could neyther see nor heare until it was to late to prevent it for that he orderd y<sup>e</sup> helme alee as soone as he heard any noyse but Could not prevent runing on board so sayth his Company, though thre witnesses testifiye one of the Company viz sayd they had a boole of punch & so did not mynde it, that person denyeth that he sayde so if he did he forgate it; done about 12. 7<sup>br</sup> 1672.

John Chantry as principal in 500<sup>l</sup> James wholcome & John mellowes as suertyes in 250<sup>l</sup> apeice acknowleg themselves bownd to the treasurer of the Country that John Chantry & his ketches Company being seven men shal appeare at the Co<sup>r</sup>t of asistants upon ajounem<sup>t</sup> to answer what shalbe aledged ag<sup>t</sup> them for the same & abyde the order of the Co<sup>r</sup>t done the 16. 7<sup>br</sup> 1672 before me John Leuerett dept. Gouverno<sup>r</sup>

Criminal action was at once instituted before the Court of Assistants, which on October 8, 1672 (Records of the Courts of Assistants, iii. 224) sentenced the master and the members of his crew to an admonition, referring the partjes damified thereby to their legall advantages & that they pay the fees of Court.

As suggested by this Court, Wood entered a civil suit for damages against Chantrell in the County Court, presenting the following bill of damages (S. F. 1163.17):

A true Acco<sup>t</sup> of the Vallue of the Shallop Hopewell of Boston lately ran under water being at ankor, in or towards the Evening by John Chanterly his Catch as followeth. Viz<sup>t</sup>

The Hull by itselfe . . . . .	£:10:00:00
To a new Roade poyse: 4 <sup>o</sup> 0:7 . . . . .	£:08:15:00
To the maine Saile foresaile & spreysaile . . . . .	£:04:10:00
To the Masts & three oares . . . . .	£:01:10:00
To an ankor . . . . .	£:01:05:00



To a peece of old Roade & all the rigging . . . . .	£:03:00:00
To a pump & all her blocks . . . . .	£:01:05:00
To a Compas, Lanthorn, iron pot. 2. wat <sup>r</sup> Caske . . . . .	£:00:17:00
To a Rudder & iron worke . . . . .	£:00:06:00
To 2 Bucket's, Cann & platter's . . . . .	£:00:06:06

Summe is . . . . . £:31:14:06

A true acco<sup>t</sup> of the Fishing Craft cast away in the saide Shallop under the Command of Alexander Wood following & fish it being his own[e]

To two thirds of 18: bar <sup>ts</sup> of Mackarell . . . . .	£:06:00:00
To two thirds of two barrells of Fish . . . . .	£:00:13:04
To leads, lines, and other materialls . . . . .	£:01:16:00
To 2 butts .1. hh <sup>d</sup> .6. barrell's . . . . .	£:01:13:00
To his Cloathen w <sup>th</sup> shirts, bookes, box, bedding &c. . . . .	£:10:00:00

Summe is . . . . . £20:02:04

More to loss of time being deprived of the Boate in that time of the  
yeare when other Boats kild above thirty barrells afterwards;  
which hee hope to bee considered by the hono<sup>rd</sup> Court for his loss  
of time . . . . . £:01:00:00

Besides what is abouesaid the two men that are cast away with the Shallop are  
Debto<sup>rs</sup> for Boat hire & other wages vpon their generall; which if it should reflect  
vpon the said woode, it would come to £12: at leaste.

Alexander Wood

Sworne in Court the 30<sup>th</sup>: 8: 72. by Alexand<sup>r</sup> Wood that this is a just & true  
acco<sup>t</sup> of his dammage susteined by loss of his boate. As attests Isaac Addington  
Cler.

The testimony of three fishermen (S. F. 1163.6):

. . . The same Evening that the Catch whereof John Chantrell is master ran  
down the Shallop of Alexand<sup>r</sup> Wood it was a Starr Light Evening & faire hand-  
some weather the winde at southwest & wee these Deponants riding at ankor  
not far of this Boate, often looked out & saw a boate that rode about halfe a  
quarter of a mile from us very plainely & further say not.

Three others declared that they had met one of Chantrell's crew ashore,  
who admitted that "they had not minded it" (the collision) "for they  
had got a Cup of punch before them" (S. F. 1163.6); but John Crocum,  
a passenger on the True Love, deposed (S. F. 1163.8) that he had been on  
deck

when this accident was & six men else . . . & there was noe punch stirring not  
three hours before in the Catch & that the Master gaue order to haue good looking  
out boath for the Boates & the Land & they did the best of their Endeavor &  
looked out some of one side & some of the other . . .

## S. F. 1163.10

Thomas Hatherly aged about 38 yeares of age or thereabout testifieth & saith that hee heard Alexand<sup>r</sup> Wood the master of the Shallop that was preserved, saide that hee could lay neither negligence nor carelesness to the Masters charge John Chantrells but the saide Wood saide hee did beleive that as soone as hee heard him call or see the Shallop hee did doe the vtmost of his Endeavo<sup>r</sup> to Shun them, but being soe neere hee could not before hee run aboard the shallop & after this sad accident fell out the saide Wood said alsoe there was noe man Living that could take more care & paines to Save theire Lives then hee did & I heard the saide Wood say alsoe they might all haue saved theire lives if they would haue taken hold of the Ropes that was throwne unto them but they were afraide of theire Armes.

Taken vpon oath the 7<sup>th</sup> of the 8<sup>th</sup> m<sup>o</sup> 1672 before mee

Anthony Stoddard Commis<sup>r</sup>

True Coppie . . .

Daniel Turrell deposed to the same effect, October 8, 1672 (S. F. 1163.11). Wood's bill of costs follows (S. F. 1163.16):

Alexand<sup>r</sup> Woode plaintiffe against John Chantrell Defend<sup>t</sup> his bill of Costs in the saide Accion

For the Attachm <sup>t</sup> & bond . . . . .	£:00:00:10
for Serving the Attachm <sup>t</sup> . . . . .	£:00:01:00
For three Coppies of Evidances from m <sup>r</sup> Rawson's . . . . .	£ 00:01:06
for 3 witnesses from hull one day to each . . . . .	£:00:06:00
for 2 witnesses from Marblehead 3 dayes to each . . . . .	£:00:12:00
for one witness more 2 dayes . . . . .	£:00:03:00
for 4 Summonses . . . . .	£:00:00:08
for 3 witnesses more heere at Boston . . . . .	£:00:04:06
for Entring the Accion . . . . .	£:01:00:00
for my owne Attendance four dayes . . . . .	£:00:06:00
for filing of papers . . . . .	£ 00:02:06

Allowed I. A. C      Summe is . . . . . £:02:18:00

Chantrell's "Reasons of Appeale" (S. F. 1163.4) were presented to the Court of Assistants, February 26, 1672-73, by James Whetcombe, his attorney. He objects to paying the entire damage, "being informed y<sup>t</sup> 'tis a Rule in Admiralty that where Losse happeneth not absolutely done by one particuler person every indeividuall man payeth his proportionable parte . . . The Law Sayth that Dammage as this done shall be left to indifferent men appointed by the Judges, but this was not done." The accident occurred "through the neglect of the Defend<sup>t</sup> in not Vseing w<sup>t</sup> meanes he might, haueing both fyre & candle" to give warning, "They seeing me by the bynesse of my Vessell before I could see them." And, finally, "Because the jury giveth the full Vallew of the Shallop & goods to the Defend<sup>t</sup> who sues neither as master nor Owner of s<sup>d</sup> Shallop So

that Jn<sup>o</sup> of Styles<sup>1</sup> might as legally sue as Allexand<sup>r</sup> Wood according to the Attachm<sup>t</sup>." Signed by James Whetcomb in behalf of John Chantrell. Received "Feb<sup>ry</sup> 26<sup>th</sup> 1672 about nine oclock in the morning."

Alexander Wood answered (original signed, S. F. 1163.5), that he sued Chantrell the master because he had no one else to sue — also "y<sup>e</sup> Law Saith Page (97) y<sup>t</sup> y<sup>e</sup> p<sup>r</sup>son offending shall pay y<sup>e</sup> Damage which Is y<sup>e</sup> Master, y<sup>e</sup> Law Doth not Say y<sup>e</sup> Master and Company."

This reference was to the Lawes and Liberties of 1672, chapter on Maritime Affairs, sec. 13, which law is quoted correctly. The "indifferent" men to judge the damage was provided by the jury, continues Wood; the night was brightly starlit, and "they minded more a boale of punch then harkening to y<sup>e</sup> cry of persons y<sup>t</sup> lost there liues."

It does not appear that the appeal was allowed.]

#### PECK cont<sup>a</sup> LAWTON

Thomas Peck, plain<sup>t</sup> cont<sup>a</sup> Henry Lawton Defend<sup>t</sup> in an Accion of the case for breach of Charter party bearing date 23. day of August 1670. & deteining his quarter part of the Catch therein Specified about thirteene months after the expiracion of the Charter to the greate dammage of the plaint. with other due dammages according to Attachm<sup>t</sup> Dat: Septemb<sup>r</sup> 3. 1672. . . . The Jury . . . found for the plaint forty five pounds ten shillings in mony dammage & Costs of Court. being 48<sup>s</sup> 2<sup>d</sup>

Execucion issued Jan<sup>r</sup> 29: 1672: for 47<sup>li</sup> 18<sup>s</sup> 2<sup>d</sup>

[See Peck v. Bonner, above, pp. 31–36, notes to Lawton & Bonner's bond, below, pp. 176–177, and Lawton v. Peck, below, p. 293.]

#### SMITH cont<sup>a</sup> WALDREN

Christopher Smith, plain<sup>t</sup> cont<sup>a</sup> William Waldren Defend<sup>t</sup> in an accion of the case for non paiment of twenty eight pounds thirteen shillings & four pence half penny or thereabouts, or what shall justly appeare to be due to the saide Smith for one third part of the ballance of an acco<sup>t</sup> which acco<sup>t</sup> the saide Waldren sued for & the saide Smith took his oath to in Court: 31:5:1672 & due dammages according to Attachm<sup>t</sup> Dat. August: 23, 1672. . . . The Jury . . . [81] founde for

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<sup>1</sup> John-a-nokes and John-a-stiles were fictitious names for parties in a legal action.

the plaint on the ballance of acco<sup>ts</sup> twenty eight pounds six shillings & eight pence halfe penny being one third of the ballance, the saide plaint being accountable to the partners in fellowship theire parts of the goods in the plaint's hand as is Specified in the acco<sup>t</sup> vpon oath in the four last perticulers & costs of Court which was 22 sh<sup>1</sup>

Execucion issued Nov. 30<sup>th</sup> 72 for £:29. 8: 8:½.

[ See next case.]

#### SMITH cont<sup>a</sup> WALDREN

Christopher Smith, plaint. cont<sup>a</sup> William Waldren adm<sup>r</sup> to the Estate of Oliver Duncombe deceased Defend<sup>t</sup> in an Accion of the case for non paiment of twenty eight pounds thirteen shillings & four pence halfe penny or thereabouts or what shall justly appeare to bee due to the saide Smith for one third part of the ballonce of an account; which Account the saide Waldren Sued for & the saide Smith tooke his oath to in Court 31<sup>th</sup> day of fifth month 1672 & due dammages according to Attachm<sup>t</sup> Dat. y<sup>e</sup> 23<sup>th</sup> day of August. 1672. . . . The Jury . . . founde for the plaint. on the ballance of Acco<sup>ts</sup> twenty eight pounds six shillings & eight pence halfe penny being one third of the ballance, the saide plaint. being accountable to the partn<sup>rs</sup> in fellowship theire parts of the goods in the plaint's hand as is specified in the acco<sup>t</sup> vpon Oathe in the four last perticulers & Costs of Court which was 27sh<sup>1</sup> 2<sup>d</sup>

Execucion issued Nov<sup>r</sup> 30: 1672 for £29: 13: 9:½.

[ See above, pp. 135, 158, 163, and below, pp. 186, 193, 202.]

#### SMITH cont<sup>a</sup> KENT

Thomas Smith, plaint. cont<sup>a</sup> William Kent Defend<sup>t</sup> in an Accion of Reveiw of a judgment of nine pounds six Shillings & eight pence obtained by the saide Kent ags<sup>t</sup> the saide Smith at a County Court held at Boston in july last past & due dammages according to Attachment Dat. october 24<sup>th</sup> 1672. . . . The Jury . . . founde for the Defendant costs of Court. The plaintiffe appealed from this judgement to the next Court of Assistants & the saide Tho: Smith as principle in Eighteen pounds & M<sup>r</sup> Peter Lidgett & M<sup>r</sup> Tho: Deane as Sureties in nine pounds apeice acknowledged themselves bound . . . that s<sup>d</sup> Tho: Smith shall prosecute his appeale. . . .



[ The case of Sarah Blacklock again. See Kent v. Smith, above, p. 128. Smith's appeal (S. F. 1164) follows:

Tho Smith his reasons of Appeale from the judgement of the County Court held in Boston Octob<sup>r</sup> 29: 1672

Inp<sup>r</sup> The Plaintife did giue vp his intrest in the person of his seruant for the Consideration of eight pounds in mony paid to the Plaintife by M<sup>r</sup> W<sup>m</sup> Kent, & the said kent tooke her by his owne choyce & her Consent freely without any consideration of any other ingagements & in full performance of her former Indentures betwene her & her Said Master Smith, which is proued by Sarah Blacklock her testimony owned by Said Kent in Court 31: 8<sup>mo</sup> 1672 therefore the Plaintife humbly conceiues that the defendant had his full Bargaine

2<sup>ly</sup> The plaintife dos not refuse but is redy to doe anything legally required of him, but knows nothing on his part (tell better informed) to bee further done, as the now defendant proues by his acknowledgment to his seruants deposition

3: the present Defendant ownes the person, namely Sarah Blacklock to bee his servant in his first Attachment, but sayeth the said seruant was never maid ouer according to Law by the present Plaintife, which Law the Plaintife knoweth not for want of Direction, but that the person in Controversey put herselfe an Apprentice to the present Defendant is euidente; as witnes M<sup>r</sup> William Kents acknowledgement in open Court the thirty first of octob<sup>r</sup> one thousand six hundred & seuenty two

Thomas Norman Attorney of and in the behalfe of Tho: Smith

It does not appear that the appeal was allowed or prosecuted.

For the order to Thomas Smith to deport Sarah Blacklock, see above, p. 149; for subsequent actions of that versatile wench, see below, pp. 186, 189, 237.]

#### BONNER cont<sup>a</sup> LAWTON

John Bonner, plaint. cont<sup>a</sup> Henry Lawton Defend<sup>t</sup> in an accion of reveiw according to Attachm<sup>t</sup> Dat. 24<sup>th</sup> Octob<sup>r</sup> 1672. The plaint. withdrew his Accion. [82]

#### BONNER cont<sup>a</sup> LAWTON

John Bonner, plaint. contra Henry Lawton Defend<sup>t</sup> for wages according to Attachm<sup>t</sup> Dat. Septemb<sup>r</sup> 21<sup>th</sup> 1672. The plaint. withdrew his Accion.

#### LAWTON cont<sup>a</sup> BONNER

Henry Lawton, plaint. cont<sup>a</sup> John Bonner Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Septemb<sup>t</sup> 26<sup>th</sup> 1672. The plaint. withdrew his Accion.

BONNER cont<sup>a</sup> IRELAND

John Bonner, plaint. conta<sup>a</sup> John Ireland Defend<sup>t</sup> according to Attachment. Dat. August: 3: 1672. The Plaint. withdrew his Accion.

BONNER cont<sup>a</sup> LAWTON

John Bonner, plaint. conta<sup>a</sup> Henry Lawton Defend<sup>t</sup> for an accot<sup>t</sup> According to Attachm<sup>t</sup> Dat. Septemb<sup>r</sup> 3: 1672. The Plaint. withdrew his accion.

[A part of the series of Ketch Recovery cases; a consequence of Lawton v. Bonner, above, pp. 152-3. These actions were withdrawn in consequence of the agreement recorded below, pp. 176-7.]

ANDERSON cont<sup>a</sup>. COX

John Anderson, plaint. conta<sup>a</sup> Robert Cox Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 23<sup>th</sup> 1672. The plaint. on non appearance was Non Suited.

SNELLING cont<sup>a</sup> CHANTREL

Sarah Snelling plaint. conta<sup>a</sup> John Chantrel Defend<sup>t</sup> in an accion of the case for overrunning & sinking of the Boate in which the saide Snelling was; the saide Boate being at an anchor neere Cape Cod; whereby the saide Snelling not onely lost his life but alsoe his Fish & other Trade hee had aboard, whereby the saide Sarah Snelling (& her children) being but one handed wilbee forced to rely vpon the Towne for Maintenance & all due dammages according to Attachm<sup>t</sup> Dat. 24<sup>th</sup> 8: 1672. . . . The Jury . . . founde for the Defendant costs of Court.

[Cf. Wood v. Chantrell, above, pp. 159-163.]

GOULDING cont<sup>a</sup> HAUTHORNE

Peter Goulding Attourney of Zechariah Phillips assigne of William Phillips plaint. conta<sup>a</sup> John Hawthorne Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. August 9<sup>th</sup> 1672. The plaint. in failor of process was non Suited.

HUDSON cont<sup>a</sup> SHEPARD

Nathaniell Hudson plaint. conta<sup>a</sup> Andrew Shepard, Defend<sup>t</sup>. The plaint. vpon non appearance was Non Suited.

BONNER cont<sup>a</sup> ASHTON

John Bonner, plaint cont<sup>a</sup> Henry Ashton Defend<sup>t</sup> on a Reveiw according to Attachm<sup>t</sup> Dat. August 3<sup>d</sup> 1672. The plaint. withdrew his Accion. [83]

BONNER contr<sup>a</sup> ASHTON

John Bonner plaint cont<sup>a</sup> Henry Ashton Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Septemb<sup>r</sup> 2: 1672 The plaint. withdrew his accion.

[For the previous history of this case, see Ashton v. Bonner, pp. 141-2. These two actions for review were withdrawn in consequence of an arbitral agreement not here recorded, but the nature of which is indicated by the following arbitral award, dated January 20, 1672/73 (S. F. 1341.26):

Whereas per an Instrument from the County Court dated the 29<sup>th</sup> October 1672 was referred to us John Joyliffe Peter Lidget & Thomas Deane all such differences as was between John Bonner & Henry Ashton as is more fully expressed by saide Instrument of Court reference thereto being had may appeare: We having heard read & considered the whole difference between them, & also the tryall at Law in a case at a County Court held at Boston the 30<sup>th</sup> July last doe Award as followeth. Viz<sup>t</sup> That soe much as was recovered by saide Ashton at saide Court ag[s]<sup>t</sup> saide Bonner bee returned to saide Bonner being Seventy pounds damage & four pounds Seventeen shillings charges with serving the Execucion; Also wee Award s<sup>d</sup> Ashton to pay unto saide Bonner in mony thirteen pounds Sixteen shillings & four pence being the full ballance of the accompt<sup>t</sup> between s<sup>d</sup> Ashton & Bonner, all to be returned & paide within ten dayes after the date hereof: Further wee Award that saide Ashton shall Satisfy m<sup>r</sup> John Williamson for a Wagoner which saide Bonner received & Ashton charrgeth him on accompt, for wee having considered saide Ashton for the same in this Award & allowed him for it thirty shillings: And Likewise wee Award that saide Ashton shall pay ten shillings for charges of the Arbitration spent where wee met & that saide Bonner & Ashton or his Security on his behalfe shall at the performance hereof giue Legall discharges each to other: And this wee giue as o<sup>r</sup> Award for a full & finall determination & issue of all differences between them committed to us in the case. In testimony whereof wee haue hereunto put o<sup>r</sup> hands & Seales the 20<sup>th</sup> day of Janu<sup>ry</sup> 1672

Owned in Court by the Defend<sup>t</sup>  
The first of August 1673  
as Attests F B C

John Joyliffe & a Seal  
Peter Lidget & a Seal  
Tho: Deane & a Seal

The award was not accepted by Bonner, who was sued by Ashton for non-performance of his bond, in July, 1673. See below, p. 292.]

DINELY cont<sup>a</sup> STEENWICK

Fathergon Dinely adm<sup>r</sup> to the Estate of John Dinely late of Boston deceased plaint. against the goods Debts or estate of Cornelius Steen-

wick, in the hands of Capt<sup>a</sup> William Davis, or wherever else it may bee founde, the saide Capt<sup>a</sup> Davis being Attourney to the saide Steenwick Defend<sup>t</sup> in an Accon of Reveiw of a judgm<sup>t</sup> entred the last Court of Assistants in March last past, but the saide Accion was tried at the Court of Assistants in September last past; wherein saide Capt<sup>a</sup> Davis was as Attourney to saide Cornelius Steenwick plaint. against the Estate of saide John Dinely deceased; which is greatly to the dammage of the plaint. & other due dammages according to Attachm<sup>t</sup> Dat. August 29<sup>th</sup> 1672. . . . The jury findes for the plaint. that the Defendant shall deliver up to the plaintiffe whatever was Levied by Execucion which was the Estate of John Dinely & now in the hands of Capt<sup>a</sup> William Davis attourney to Cornelius Steenwick or to pay the plaintiffe two hundred pounds in Mony & Costs of Court. The Defendant appealed to the next Court of Assistants, & the saide Capt<sup>a</sup> William Davis as principall in four hundred pounds & M<sup>r</sup> Nicholas Page & John Vsher as Sureties in two hundred pounds apeice acknowledged themselves in open Court jointly & severally bound to . . . prosecute his appeale . . .

[Cornelis Steenwyck, the defendant, was the owner of Fordham Manor. New York, and rated the second wealthiest burgher of New Amsterdam. He was at this time a member of the Governor's Council during the brief restoration of Dutch rule that came with the third Anglo-Dutch war, John Dinely was a Boston shipmaster who traded on his own account between Boston, Virginia, and the West Indies. He died in Virginia (S. F. 1290.22), or, according to another account, in Nevis, in 1669, owing Steenwyck a debt of 1696 guilders, 16 stivers. This case arose from an effort of Dinely's brother and executor, Fathergon Dinely, to evade payment of the debt.

Some of the evidence, endorsed "3 Certificates from New York" (S. F. 1290.20), follows:

Theis may testify all whom it may concerne That Nicolas Bayard of this Citty did this day make oath before mee y<sup>t</sup> hee was witnes to a certaine Bill bearing date the  $\frac{5}{15}$  day of July 1663 made by John Dinely to m<sup>r</sup> Cornelius Stenwicke, Majo<sup>r</sup> of this Citty and that his name being by some accident blotted therein hee hath likewise certified the same on the Back Side vnder his hand Giuen vnder my hand at Fort James in New yorke this 10<sup>th</sup> day of August 1670

Francis Louelace

This is a true Coppie as Attests Freegrace Bendall Cl<sup>r</sup>



S. F. 1290.19

From Nomany<sup>1</sup> In evarith<sup>2</sup> 23<sup>th</sup> 1668

Hon<sup>d</sup> Freind  
M<sup>r</sup> Stenwick

Sir: I receiued yo<sup>r</sup> Letter per m<sup>r</sup> Edsall I returne y<sup>w</sup> many thanks for yo<sup>r</sup> kind lines to mee: Tobbacco falls short with mee this yeere by y<sup>e</sup> reason of my going to Barbadoes otherwise I would haue sent you some tobbacco this yeere, Sir I confess it is time y<sup>t</sup> it were paid But if please God to Spare mee my life I will come to New York the next October and pay all my Engagm<sup>ts</sup> honestly For I haue got mee a vessell w<sup>ch</sup> will bee very necessary for mee to performe what I now write vnto y<sup>w</sup>. Not else at p<sup>r</sup>sent but my Service p<sup>r</sup>sented to y<sup>w</sup> and yo<sup>r</sup> Lady I rem yo<sup>r</sup> Serv<sup>t</sup> to Comand

John Dinely

Superscribed For his hon<sup>d</sup>  
Freind m<sup>r</sup> Corn<sup>ell</sup> Stenwick  
at New Yorke Merchant these p<sup>r</sup>sent

. . . True Coppie as attests FreeGrace Bendall Cler

S. F. 1290.28

Samuell Edsall aged about Thirty Seaven yeeres maketh oath that being shewne a certaine obligation from John Dinely of Boston made to m<sup>r</sup> Cornelius Steenwick where unto is subscribed the name of John Dinely. hee this depon<sup>et</sup> vpon seu<sup>r</sup>all occasions knew the hand writing of the said Dinely Exceeding well and Declareth that this was his hand. Moreouer being employed by m<sup>r</sup> Stenwick vpon a voyage hee tooke into Virginia to Demand the debt of John Dinely and to offer him time of paym<sup>t</sup> after the Bond was Due as at one two or three paym<sup>ts</sup> if hee could not Doe it at one or two Hee the Said Dinely did then acknowledge the debt to this depon<sup>t</sup> & said, I am now bound to the Barbadoes and if m<sup>r</sup> Steerman shall arriue here before I goe I will Endeauo<sup>r</sup> imediatly to send part of the debt And if it should please god hee should returne backe to Virginia from Barbadoes hee designs his next voyage to New yorke. where hee would comply with m<sup>r</sup> Stenwick for his Obligation in the whole but he neu<sup>r</sup> returned backe This Deponent further Saith y<sup>t</sup> hee supposeth the said John Dinely Spake as hee thought & Did intend hee Expecting to receiue mony of m<sup>r</sup> Steerman who was his wiues father in lawe for her portion And further Saith not this depon<sup>t</sup>

Sworne before mee in New york this 20<sup>th</sup> day of May 1671Mathias Nicolls Secre<sup>t</sup>

True Coppie . . . FreeGrace Bendall Cler.

S. F. 1290.29

Henry Puttifer Aged about thirty fue years makes Oath y<sup>t</sup> John Dinely of Boston & the deponent went together in one vessell fue seuerall tymes betwene virginia & this place, that although he was not a witnesse to the Obligacion made

<sup>1</sup> Nominy Creek or River, on the Virginia side of the Potomac. A place at the mouth was made a market town by act of the General Assembly in 1691. Nominy Hall on the Creek was the seat of "King" Carter.

<sup>2</sup> Possibly a copyist's error for "January y<sup>e</sup> 23<sup>th</sup>."

by y<sup>e</sup> Said Dinely to M<sup>r</sup> Cornelius Stenwick, nor did he see him Set his hand therevnto yet he Knew the handwriteng of Jn<sup>o</sup> Dinely aforementioned very well & hauing Seene his hand to the Said Obligacion that is to Say his name Subscribed therevnto hee doth really beleieve it to be his owne hand writeing, That this deponent was with the Said John Dinely in this place from which they were bound together for virginia & he doth verry well remember Seuerall particulars of the Goods which John Dinely receiued for y<sup>t</sup> which he entred into this Obligacion to m<sup>r</sup> Stenwick at that tyme & the deponent doth verrily beleieve that the Said Debt was never paid by him to m<sup>r</sup> Stenwick, or by his Order to anyone else vnto him for that the Said John Dinely neuer returned back from virginia either to this place or New England for that he Sayled from thence to the West where he made some voyages vp & downe & there Dyed

Sworne before mee in New yorke this 20<sup>th</sup> Day of May 1671

Matthias Nicolls secr.

. . . True Coppie as Attests FreeGrace Bendall Cler

Captain William Davis, attorney for Steenwyck, sued Fathergon Dinely before the Suffolk County Court at the session of March-April, 1671. The record (S. F. 1290.9) follows:

At a County Court held at Boston 31. 1: m<sup>o</sup> 1671

Capt<sup>a</sup> W<sup>m</sup> Davis p<sup>lt</sup> as Attourney to Cornelius Steenwick against goods, Debts or Estate formerly belonging to John Dinely decea[sed] now in the hands of Fathergon Dinely administrato<sup>r</sup> to the said Estate Defend<sup>t</sup> in an action of Debt of Sixteene hundred [ninety] six gilders & sixteene Stivers due by bill & interest . . . the jury . . . found for the D[efend<sup>t</sup>] costs of Court.

A review was granted at the July session of the County Court in 1671 (S. F. 1290.6), and the judgment was reversed. Captain Davis promptly appealed to the Court of Assistants (S. F. 1290.13):

William Daus his Reasons of Appeale from the judgm<sup>t</sup> of the Hon<sup>d</sup> County Court in Boston.

1<sup>st</sup> Because yo<sup>r</sup> Appellant suing vpon the bill of debt in Jan. last, hauing butt one Wittnes to proue itt, was Cast whearevpon suing on a review in July last, though new Euidence was produced, was Cas<sup>t</sup> againe, and as I vnderstand, beecauss I produced a bond of the p<sup>r</sup>sen<sup>t</sup> Def<sup>ts</sup> to pay such a summ as in satisfaction of John Dinleys debt . .

2<sup>ly</sup> Becauss although such a bond was produced yett itt was butt in way of Euidenc; & the bond itt selfe butt a Security for paym<sup>t</sup>, for hee neuer tooke vp the Bill . .

3<sup>ly</sup> Becauss hauinge bothe the principles bill, and his Bro. Bond, itt was in my liberty to sue Either & vpon recouery from the principles Estate the bond was [torn] in Courss. Beesides the principle hath an [torn]te to bee Found. the Surty hath non theirefore I Conceiue the Cass should haue gone for the plantife . .

W<sup>m</sup> Davis Attourney

to Cornelius Stenwyck

Receaued the thirtieth Day of Agust at six of the Clock in the afternoone as Attests FreeGrace Bendall Cler.

The bond to which he refers was probably the following (S. F. 1290.21):

Whereas my Brother John Dinely of Boston deceased was before his death justly & truly jndebted unto M<sup>r</sup> Cornelius Steenwick of the City of New yorke Merchant in the full Summe of Sixteene hundred ninty six gilders & Sixteene Stivers, as alsoe Six hundred pounds of Tobacco more which the saide Cornelius Steenwick paide & disbursed for the saide John Dinely to one M<sup>s</sup> Wessell & alsoe to one M<sup>r</sup> Jaques Casseau of the same City Merchant in the full quantity of one Thousand Eight hundred fifty nine pounds of good Tobacco, which saide Debt the saide Cusseau hath assigned & transported over unto the saide Cornelius Steenwick as his one proper goods & Chattles; all which Debts should haue beene paide by the saide John Dinely in good sound Merchantable Leafe Tobacco free deliverance in New yorke in the yeare 1663 all which Summes at 4<sup>d</sup> per pound without interest amounts unto One hundred & thirty five pounds & fve shillings Sterling.

Know all men therefore by these pu<sup>s</sup>ents that I Fathergon Dinely of Boston in New England my heires & Executo<sup>rs</sup> doe stand firmly bound unto the above-saide Cornelius Steenwick his heires Executo<sup>rs</sup> administrato<sup>rs</sup> or assignes in the full Summe of two hundred & Seventy pounds Sterling to which paiement well & truly to bee made I doe binde mee my heires Executo<sup>rs</sup> & administrato<sup>rs</sup> firmly by theire pu<sup>s</sup>ents. In wittness whereof I haue hereunto Set my hand & Seale in New yorke this thirtieth day of June 1670.

The Condicion of the within written obligacion is such that whereas the within bound Fathergon Dinely hath at this pu<sup>s</sup>ent time a certaine Estate in his hands at his disposing of his saide Brother John Dinely deceased & alsoe is apparent heire & Executo<sup>r</sup> to his saide Brother by due course of law, his saide brother dying without issue. Now if the saide Fathergon Dinely his heires, Executo<sup>rs</sup> or assignes (after paying to Capt<sup>s</sup> Lake the Summe of forty two pounds ten Shillings & unto M<sup>r</sup> Gibson about Eight pounds more) doe well & truly pay or cause to bee paide unto the saide Cornelius Steenwick or his order the full Summe of one hundred thirty five pounds & five Shillings Silver pay or mony in the City of Boston in New England Provided there shall bee Effects be in his hands when they abouementioned two Summes are paide or allowed none other to haue pu<sup>s</sup>erenc[e] or excepted then this pu<sup>s</sup>ent obligacion to bee voide & of none Effect, otherwise bee of full force & Vertue.

Fathergon Dinely & a Seale

Sigillat et Deliberat in pu<sup>s</sup>entia Henry Newton John Sharpe Notar Public.  
Thomas Taylor

Memorand. it is Mutually agreed on & concluded by & between the parties above mentioned before the Signing & Sealing hereof that the saide forty two pounds to Capt<sup>s</sup> Lake & Eight pounds to M<sup>r</sup> Gibson are not to bee paide by the saide Dinely before the abovementioned Summe to Cornelius Steenwick unless the saide Dinely is thereunto constrained & compelled by due course of law & order of Court.

. . . True coppie . . .

The case reached the Court of Assistants on September 5, 1671. The material part of the record (S. F. 1290.7, printed in Records of Court of Assistants, iii. 208), follows:

The jury brought in theire Verdict. a Speciall Verdict. i. e. in case the great blots or blurr on the bill in question being mostly in the place of the Testimonies Subscription will make it voide in law, notwithstanding a possitive witness to the bill affirming the Subscription of the Debtor & other Testimony affirming the owning the Debt then wee finde for the Defendant costs of Courts; But in case such blot as aforesaide will not nullify the saide bill in law then wee finde for the plaintiffe one hundred forty one pounds Eight Shillings in Country pay & costs of Courts. The Magistrates on perusal of this Verdict findes for the plaintiffe one hundred forty one pounds Eight Shillings in currant Country pay & costs of Courts four pounds thirteen Shillings & nine pence — This Verdict is to stand Entred from y<sup>e</sup> 5<sup>th</sup> March 167½. according to law.

That this is a True Coppie taken out of the Courts booke of Records Attests

Edw: Rawson Secret.

Isaac Addington Cler."

In consequence of this decision in favor of Steenwyck, a writ of execution was issued against the Dinely estate in his brother Fathergon's hands, and a lot 61 x 41½ x 115 x 100 feet "vpon the Street where the prison is" in Boston, together with a two-acre pasture, were appraised at 105*l* in part satisfaction of the judgment (Records of Court of Assistants, iii. 209–11). This at length brings us to the action of review of Dinely v. Steenwyck recorded in the entry above. William Davis's reasons of appeal from that verdict to the Court of Assistants (S. F. 1290.15) follow:

W<sup>m</sup> Daus, Attourney of Cornelius Stenwick his Reasons of Appealle from the Verdict of the Jury in Octob<sup>r</sup> 1672

first Because the accion Commenced against the pl. by the Defend<sup>t</sup>, is nott the same vpon w<sup>ch</sup> the pl obtained a judgm<sup>t</sup> in sep<sup>t</sup> 1671 att the Court of Assistants the demonstration hereof appeares

first The pl. sued the Estate, formerly belonging to Jn<sup>o</sup> Dinely deceased in the hands of Fathergone Dinely, administrator to the said Estate, as per attachm<sup>t</sup> [ ] will appeare:

2<sup>ly</sup> By the Verdict of the Jury & judgm<sup>t</sup> of Court w<sup>ch</sup> is against Fathergone Dinely, & nott against Jn<sup>o</sup> Dinelys Estate Deceased, as the Defen<sup>ts</sup> attachm<sup>t</sup> Saith ——— 3<sup>ly</sup> ——— Because the law title tryalls saith in Causes beetwene party & party, if the party agains<sup>t</sup> whom judgm<sup>t</sup> shall pass shall haue any new plea &c;<sup>1</sup> w<sup>ch</sup> law Supposeth itt must bee the same Case in w<sup>ch</sup> the party was Caste must bee Reuiewed, butt this Case is nott Such, for

firs<sup>t</sup> The Case tryed beefore the Courte of assistants, was nott produced, onely a few loose pap<sup>rs</sup>; Therefore noe Reuiew of the Case wherein the pl obtained judgm<sup>t</sup> — 2<sup>ly</sup> — No new Evidence was produced by the defendant, Either to null the Bill, or prooue the debt paid, w<sup>th</sup>out w<sup>ch</sup> no reuiew, Could bee granted, any pap<sup>rs</sup> whatsoever of another Importe, & pretended new Euidences Notwithstanding

3<sup>ly</sup> The Records of the Court of Assistants were nott produced vpon w<sup>ch</sup> judgm<sup>t</sup> was giuen by them, w<sup>th</sup>out w<sup>ch</sup> the Court Could nott Compl [ ] any plea

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<sup>1</sup> The reference is to The Generall Laws and Liberties, 1672, p. 152.



or Euidence Called new — 4 ly — By this meanes the Deft reflects greate injustice on this Hon<sup>d</sup> Court, in granting a judgm<sup>t</sup>, vpon onely pra'tended grounds — 5<sup>ly</sup> — by this means the Court & Jury were abused, & the Jury misled to an issue in their Verdict, as will Appeare on furthar plea.

W<sup>m</sup> Davis

These Reasons were received from Capt<sup>a</sup> William Davis Feb<sup>ry</sup>: 26: 1672  
As Attests Isaac Addington Cler

Here there is a gap in the record. It would seem that, in view of Dinely's subsequent actions, the Court of Assistants must have reversed the verdict of the County Court in its winter session of 1672–73, but no record can be found. Dinely's next move was to sue Captain Davis (S. F. 1290.5):

To The Marshall of y<sup>e</sup> County of Suffolk or his Deputy

You are heereby required in his Mat<sup>ies</sup> Name to Attach the goods or Estate of Cornelius Fenwick in the hands of Cap<sup>t</sup> William Davis by Vertue of an Execution granted to the Said Cap<sup>t</sup> Davis as Attourney to the s<sup>d</sup> Fenwick & serued to vallue of one hundred & fuetty pounds to be responsall at the next County Court to be held at Boston then & there to Answer y<sup>e</sup> complaint of Fathergon Dinely Administrator to y<sup>e</sup> Estate of Jn<sup>o</sup> Dinely Deceased in an Action of the Case for Illegal seizing aprizing & makeing Diuition of a howse & land, that the aforesaid John Dinely was neuer Legally possessed of nor diuition euer hauing bin made betwene y<sup>e</sup> afores<sup>d</sup> John & Fathergon Dinely in the said Land but after the Decease of John Dinely Fathergon Dinely his Brother as Administrator to the Deceased his Estate was Legally possessed of y<sup>e</sup> s<sup>d</sup> howse & Land & hath fully Satisfied for them as may appeare by s<sup>d</sup> Fathergon his accoumpt giuen to & accepted by the County Court with all Due Damages & so make a tru Returne heereof vnder your hand Dated the Twenty third of Aprill 1673

By the Court Jonath. Negus

. . . True Coppy . . . Free Grace Bendall Cler

For a continuance of this case — Dinely v. Steenwyck — see below, p. 246. In the meantime Fathergon Dinely endeavored to get back a bit of his own by stealing hay from Captain Davis' barn. See below, p. 234.]

#### ATHERTON cont<sup>a</sup> SHEPARD

Jonathan Atherton, plaint. cont<sup>a</sup> George Shepard Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. August: 16: 1672. The plaint. in failor of process was Non Suited & Hudson Leverett Tho: Norman & Peter Egerton appearing for George Shepard for whome they were Sureties & had 11.<sup>s</sup> Costs granted them.

Execucion issued Nov<sup>r</sup> 29<sup>th</sup> 1672 for 11<sup>s</sup>

ATWATER cont<sup>a</sup> BRIDGE

Joshua Atwater, plaint. cont<sup>a</sup> Matthew Bridge Defendant in an Accion of Debt of seven & thirty pounds one Shilling & three pence in mony due by bill & due dammage & jnterest according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 9<sup>th</sup> 1672. . . . [84] The jury . . . founde for the plaint. thirty seven pounds one Shilling three pence in Mony & costs of Court. being twenty eight shillings & two pence.

Execucion issued Aug<sup>o</sup>: 10<sup>th</sup>: 1674 for £:38: 9: 5: mony.

SAVAGE contr<sup>a</sup> HOLLINGSWORTH

Capt<sup>a</sup> Thomas Savage plaint. cont<sup>a</sup> William Hollingsworth Defend<sup>t</sup> in an Accion of the case for withholding a Debt of fourteen pounds in Mony due by bill with due dammages according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 11<sup>th</sup> 1672. . . . The Jury . . . founde for the plaintiffe, ten pounds Fourteen shillings & seven pence in Mony dammage & costs of court twenty seven shillings & nine pence.

Execucion issued Aprill: 22<sup>d</sup>: 1674. for £:12:1:9. m<sup>o</sup>

ATWATER cont<sup>a</sup> SEARLE

Joshua Atwater, plaint. cont<sup>a</sup> Daniell Searle Esq<sup>r</sup> Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July. 30<sup>th</sup> 1672. The plaint. in failor of process was nonsuited.

ATWATER cont<sup>a</sup> SEARLE

Joshua Atwater, plaint. cont<sup>a</sup> Daniell Searle Esq<sup>r</sup> Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July. 30<sup>th</sup> 1672. The plaint in failor of process was nonsuited.

STEBBINS cont<sup>a</sup> OLIVER

John Stebbins plaint. cont<sup>a</sup> Capt<sup>a</sup> James Oliver Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. 17: 8: 1672. The plaint. withdrew his Accion.

MARSHALL cont<sup>a</sup> WIBORN

Robert Marshall plaint. cont<sup>a</sup> John Wiborn Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. 24. 7. 1672. The plaint. in failor of process was non Suited. Costs granted the Defend<sup>t</sup>.

Execucion issued xb<sup>r</sup> 20. 1672 for Costs.

[ See above, p. 127.]

## EYRE to FROST

John Eyre of Havarill, came into Court & acknowledged a judgm<sup>t</sup> against himselfe & Estate for Eighteen pounds in Mony to John Frost Marriner of Boston. Octob<sup>r</sup> 29<sup>th</sup> 1672. according to bill. As Attests Isaac Addington Cler.

Execucion issued 4. Janu<sup>r</sup> 72. for 18<sup>li</sup> m<sup>o</sup>

Execucion renewed 8<sup>br</sup> 23<sup>o</sup> 1676.

## HUDSON &amp; JOY to WHARTON

Capt<sup>a</sup> William Hudson & Thomas Joy came into Court & acknowledged a judgm<sup>t</sup> against themselves & Estates jointly & Severally to Richard Wharton agent to Robert Bendish & Comp<sup>a</sup> for the Summe of seventy five pounds Eleven Shillings & Eleven pence in mony according to bond. done October. 29<sup>th</sup> 1672. As Attests Isaac Addington Cler.

Execucion issued Novemb<sup>r</sup> 25. 1672 for £75: 11: 11: m<sup>o</sup>

## Freemen Sworne

Micajah Torrey, Ephraim Wight, Joseph Morse & Nathaniel Whiting tooke the Oath of Freedom of this Colony. Octob<sup>r</sup> 29<sup>th</sup> 1672.

The Court orders a warrant to bee issued out to the Constable of Boston, to take the wearing apparrell of all sorts [85] belonging to Owen Jones, out of the hands of John Harris & deliver them to saide Jones.

Peter Goulding is ordered to attend the Court.

## SAVAGE Administracion

Administracion to the Estate of Charles Geetch deceased late Servant to Capt<sup>a</sup> Thomas Savage, is granted to saide Savage, hee bringing in an Inventory of saide Estate & giving Security to Administor according to law. done Octob<sup>r</sup> 29<sup>th</sup> 1672. As Attests Isaac Addington Cler.

## JOHN FISHER'S Guardian

John Fisher, made choise of Serjant William Avery for his guardian, which the Court allowed & hee accepted.

## VIGILANT FISHER'S Guardian

Vigilant Fisher made choise of Serjant Thomas Fuller for his guardian, which the Court allowed & hee accepted.

## HANNAH FISHER'S Guardian

Hannah Fisher, made choise of Ensigne Danial Fisher for her guardian, which the Court allowed & hee accepted, being all Children of Leiv<sup>t</sup> Joshua Fisher.

## Freeman Sworn

Benjamin Bullard of Medfeilde, took the Oath of freedom of this Colony. 8<sup>br</sup> 31<sup>th</sup> 1672.

## JOSEPH HARRIS sentenced

The Court sentenceth Joseph Harris to pay five pound in Mony fine to the County for entertaining Thomas Slade a board his Vessell & agreeing with him to carry him to Barbados, the saide Slade being a Servant to Peter Fowler, the Carges of said Fowler's pursuing of him is to bee deducted out of saide fine, which is twenty Shillings. M<sup>r</sup> Richard Parker Engaged before the Court to Satisfy the same, that is to say, the whole fine

## HICKS' Administracion

Timothy Hicks appeared in Court Novemb<sup>r</sup> 1: 1672 & the Court allowed him administracion to the Estate of his late Father Richard Hicks deceased, hee bringing in an Inventory of saide Estate vpon oath & giveing Security to administer according to Law. As Attests Isaac Addington Cler.

## LAWTON &amp; BONNER'S BOND

Henry Lawton & John Bonner having Severall Accions depending in Court, did Mutually agree to refer them, & the saide Lawton made choise of M<sup>r</sup> Peter Lidget & saide Bonner for himselfe & partners chose M<sup>r</sup> Tho: Deane & the Court appointed M<sup>r</sup> John Joiliffe as a third man, which the persons jointly accepted off to refer to the afore-saide three Gentlemen all differences between them relating to any Voiadge or Voiadges in the Catch Recovery & acknowledge them-



selves bound in Court each to other in the Summe [86] of one thousand pounds to stand to their award or of any two of them as a final determinacion. M<sup>r</sup> Benjamin Gibbs standing bound for M<sup>r</sup> Henry Lawton in the aforesaid Summe & Leiv<sup>t</sup> Richard Cooke standing bound for John Bonner, vpon which they withdrew their severall Accions, to bee jsued by the 20<sup>th</sup> of next January. & M<sup>r</sup> Benjamin Gibbs & Henry Lawton bound themselves in Court jointly & severally in one hundred pounds apeece for M<sup>r</sup> Henry Ashton & John Ireland, & John Bonner & James Everell the like summe for said Bonner, bound themselves each to other jointly & Severally, to refer all Matters of difference between the said Ashton Ireland & Bonner concerning any Voiadge or Voiadges in the Catch Recovery to the finall determinacon of the aforesaid Gentlemen, they being to give in their award by the 20<sup>th</sup> of next January vpon which the plaint. withdrew his Accions.

[A consequence of one of the Ketch Recovery cases; see above, pp. 31-6, 152-3, 165-6. The record from this point becomes increasingly complicated. John Joyliffe, one of the arbitrators, declared that they were not able to make the award within the time prefixed (S. F. 1221.57); but Lawton's refusal to perform an award of the arbitrators dated January 20, 1672/73 is the ground of a suit brought against him by Bonner in the Suffolk Court on July 29, 1673 (see below, p. 291, and Records of Court of Assistants, iii. 250).

In the meantime, Lawton was committed to jail for failure to satisfy a judgment against him of 45*l* 10*s* in favor of Peck earlier in this same session (above, p. 163, and S. F. 162121).

Some of the evidence about their agreements and disagreements (S. F. 1221.62) follows:

William Timberlake aged 26 yeeres or thereabouts testifieth and Saith That sometime in June Last past Thomas Pecke and John Williams of Boston came to prison where Henry Lawton and this deponent were and there this Deponent heard Thomas Peck and Henry Lawton Say each to other that w<sup>t</sup> was then said should not bee made vse on afterward against neyther of them But now this deponent is Summoned by both of them to giue his Evidence of what hee then heard which was first that Peck Desired of Lawton that there might bee an Issue put to their difference without further going to Lawe; And 2ly if hee were in his the said Lawtons Debt that hee the said Lawton might pay himselfe while there was mony in his hands of Peckes, giuing him an Account how much it was To which Lawton answering y<sup>t</sup> there was soe much Due, which the Summe I doe not Remember Soe they broke off from any furdiscorse for that time But some dayes afterward my Cozen Peck came to prison againe and said in my hearing That if

hee the said Lawton would giue him an Account of what hee had disbursed (Lawton being present) on the katch Recovery his mony was ready for him without going to Lawe for it To which Lawton replied y<sup>t</sup> the Account was Ready if his mony was ready But this Depo[nen]t Sawe neyther the money nor Account and further Saith not

Sworne in Court 2: 6<sup>m</sup> 1673, as attests

Isaac Addington Cler.

S. F. 1221.63

John Bonner aged 30 yeeres or thereabouts Saith That I sould to m<sup>r</sup> Thomas Pecke Eight Chaldron odd bushells of Coles the which came from England in the Katch Recovery amounting to about Eleaven pounds which said Summe is not Discounted vpon any part of the hire of the abovesaid vessell nowe in Controversy between the said Pecke & Lawton But part was Receiued by worke done vpon another vessell [and] otherwise and part is Due still to this Deponent

Sworne in Court 3: 6: 73 as Attest Isaac Adington Cler.

Lawton's next move was to bring three actions for the same damages and detriments against Bonner at the Middlesex County Court in April, 1673 (S. F. 1221.11). Bonner refused to join issue, a judgment was recorded against him, and he appealed to the Court of Assistants (Records of Court of Assistants, iii. 248). His reasons of appeal (S. F. 1221.29) are of especial interest, as they plead many points of law:

John Bonner his Reasons of appeale in the Case of Henry Lawton plaintiff and him self defendan from the Judgment of the Countie Court held at Cambridg aprill the first 1673 in the Case of Charging the sayd bonner for designedly neglecting his dewtie as master and so forth

first as hath bin sayd in other cases because the then defendant was brought to that Court Contrary to the Law here established, and that Court had noe Legall powr to trie the Case as hee humbly Conceaueth, and for that end then Cyted the Law title actions page the 2<sup>d</sup> where its sayd that all actions of debt accountps slander and actions of the Case Concering debts and accountps shall henceforth bee tried where the plaintiff pleaseth, so it bee in the Juriousdiction of that Court where the plaintiff or defendant dwelleth. but neither plaintiff nor defendant dwelled in the Juriousdiction of that Court, and therfore not triable there by Law

2 ly it was pretended that the then plaintiff was a strainger, and for that end a Coppie of a law in wrighting was produced, which was made at a Genarall Court october 1672.<sup>1</sup> Vppon which hee pleaded his Libertie there to sue the Answer was then made, that the then plaintiff was noe strainger but an Inhabitant according to Law, and his Attorney m<sup>r</sup> Gibs then owned in Court that hee liued as a sarvant with him about a twelue moneths and longe after that, it was proued that hee was sent out from here vppon an Employment, and to returne hither againe and to Issue his busines with his Employer, which hee hath not yet don, as is suffitiently

<sup>1</sup> See note to Lawton v. Bonner at the special court of August, 1672, above, p. 153.

knowne to Courts and Cuntry, and therefore noe strainger, but as it was then also alleaged, the Law vpon which hee grounded his Libertie to sue, was noe Law in force, as not being printed nor published, and to proue that that Law was not in force the first libertie or Law in the Law booke was Cyted wher its sayd that noe mans person shall bee arested restrained noe mans goods or Estate shall be taken away from him and the Like as is there expressed refrenc there vnto being had, vnles it bee by vertue or Equitie of sum expres Law of the Cuntry warranting the same Establish<sup>d</sup> by the Genarall Court and suffitiently published,<sup>1</sup> but the Law Cyted was not suffitiently published, and that farther appears in that the Law relating to spetiall Courts is againe reprinted and not this new law and therefore not in force in this Case but Nextly if it had bin in force, yet it noe way Concerned the then plaintiff for hee was vpon noe Imediat Imploy either as marchent or marrinor as that Law expresseth. hee had mediat work enough here for hee was in the prisson at Boston and had let pas seuerall Courts, in the Countie where hee was, at which hee might haue tried his busines longe before and therefore it is but an emptie pretenc of his, hee was in noe neede to Run out of the way vpon that account but hee was willing to goe where his busines was not so well knowne

3 lastly because the then defendant appealed from the sentanc of the forfeiture of the bond in this Case, and the Court Granted it and tooke Securities for the prossecuting of it, so that there was a bar in Law put against any farther to heare or trie the merrit of the Case Vntill the Superior Court appealed vnto, had detirmined that poynt in Law whether that Countie Court had Legall powr to trie the Case or not it seems to bee a plaine Contradiction to grant an appeale from the illegallatie of the proceeding of the Court and yet to procede in the Case, the plaintiffs appeale is soly in matter of Law, and not in matter of fact

John Bonner

Lawton's answers to the reasons of appeal follow (S. F. 1221.22):

Henry Lawtons Answers to John Bonners Reasons of Appeale as he Calls them, from the sentence of the Honored Co<sup>rt</sup> held at Camebridge Aprill the 1<sup>t</sup> 1673: wherein the said Lawton was p<sup>lt</sup> and Bonn<sup>r</sup> Defend<sup>t</sup>, for 292<sup>li</sup> and the bond declared forfeited.

1 The p<sup>lt</sup> or Appellant pleads that he was brought to that Co<sup>rt</sup> Contrary to a Law, which the Appellant reciteth, The defend<sup>t</sup> Answers that he haueing noe dwelling in the Country but being A strainger is not by that Law oblidged to prosecution in any particuler Co<sup>rt</sup> Nor Cann the Appell<sup>t</sup> Assigne to the Defend<sup>t</sup> any habitation or Dwelling to make him an Inhabitant, Except it be the prison, whereby his means he hath most injuriously for severall months had his Residence, And Although the Defend<sup>t</sup> did formerly for some time reside in the Country, yett was then never reputed an Inhabitant. And his remove and transient Condicen since hath wholly Exempted him from the Reputation and benefitt of an Inhabitant,

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<sup>1</sup> A quotation of the Body of Liberties, incorporated in the Book of the General Laws and Libertyes, 1660 and 1672 editions. It is true that the law of October 8, 1672, changing the rules about strangers' suits, was not published within a year of its enactment. Colonial Laws of Massachusetts, Reprinted from Edition of 1672, p. 207.



As may Appaere in that he hath beene forced from time to time he hath had occasion to give Security to the Clarke of the writts before he Could obtaine Attachments Ag<sup>t</sup> the Appellant or other his Compliers

2. The Appell<sup>t</sup> saith he did there Appeare and Answer soe farr as he judged the Case did require The defend<sup>t</sup> Answers he well knowing before the Error of the Appellants Judgm<sup>t</sup> made his Adress to the honored Co<sup>rt</sup> (in whome Alone the power of passing that Sentence Remaynd,) for Judgm<sup>t</sup>; And not to the Appellant. And whereas he Chargeth the hono<sup>rd</sup> Co<sup>rt</sup> of Camebridge with Apparent Injustice) vizt, sentencing him for his obedience, the Defend<sup>t</sup> Leaves to the hono<sup>rd</sup> Co<sup>rt</sup> to Justify their Righteous proceedings Ag<sup>t</sup> such Impudent Slanders.

3. The Supreame Authority of this Country seeing good to repeale the Law for Speciall Co<sup>rts</sup> Instead thereof Enacted that persons in the defend<sup>ts</sup> Condidion might sue at any Co<sup>rt</sup> in the Country Nor Cann any Nicity in point of publication destroy the Equity thereof without dishono<sup>r</sup> to that most sage Authority that enacted the same, but what defect soever they may plead therein is supplied by that most Just and Equitable Law, Title tryalls, Sect. Last, which gives such Allowance to Straingers and New Commers as Reason and Relidgion requires, And what doth reason and Relidgion more require then that straigners vnder oppression should be spedily releived, and not be left by tedious suites and Attendances, to be devoured, And the Reason why the Defend<sup>t</sup> omitted suing the Appell<sup>t</sup> soe long, if it were soe long, was because he was A prison<sup>r</sup> in Boston, by meanes of the said Bonner and his Compliers, And being not Acquainted with the Lawes, Ignorant whe[re] to goe to looke for his releife, And by the Injury donne him, by the said Bonner his Councillors and Compliers soe Impoverished that he was not able to Comence and prosecute his Action, but if he had forbearance is n[ow] Acquittance. But the Defend<sup>ts</sup> Injury haueing by such pleas as the Appell<sup>t</sup> now produces, been thus farr Increased, he humbly hopes God will by the Just verdict and Judgment of this honored Co<sup>rt</sup> and Jury make way for his releife

Hen: Lawton

The appeal was, however, allowed, and heard on September 2, 1673, before the Court of Assistants, which upheld the verdict for Lawton at the County Court at Cambridge in April. Bonner promptly "in open Court declared he did attaynt the jury," and he and Richard Cooke and Humphry Hodges were jointly and severally bound in 50*l* apiece to the colony treasurer to prosecute their attainer (S. F., 1221. 13, printed in *Records of Courts of Assistants*, iii. 249). No record has been found of the trial. Attaining a jury "upon apparent corruption or errour in the Jury giving in their Verdict contrary to Law or Evidence" was permitted by an act of the General Court passed at the May session, 1672. Such attain had to be prosecuted before the Court of Assistants, and tried by a jury of twenty-four men. Since this privilege was "perverted to the burthening of the Countrey with unreasonable trouble," the General Court in 1684 imposed a fine of 34*l* (10*l* to the Colony and 2*l* to each juror) on the party who brought the attainer, if the first verdict was



sustained, and allowed attainted jurors to bring action for slander. Colonial Laws of Massachusetts, Reprinted from the Edition of 1672, pp. 201, 319; cf. J. B. Thayer, Treatise on Evidence, p. 173. For further developments between Lawton and Bonner, see below, p. 214.]

ELIZ<sup>a</sup> HICKS' guardian

Mr John Willoughby Marriner is appointed by the Court to bee guardian to Elizabeth Hicks daughter of Richard Hicks deceased, which hee accepted.

THO: HICKS' guardian

Nathaniell Beadle of Salem is appointed by the Court to bee guardian to Thomas Hicks, which hee accepted.

MARGARET PRINCE her Oath

Margaret Prince of Hingham, being accused by Joseph Indian for Selling him three pintes of Sider for which she paide him threepence, whereby hee was druncke sometime this last Summer, she offered to purge her selfe by her Oath, which she did as followeth; I doe here Swear by the great & dreadfull Name of the Everliving god that I neither directly nor indirectly did Sell any Sider to saide Joseph Indian nor tooke mony for it, soe help mee god.

Roxberry present<sup>d</sup>

The Towne of Roxberry presented for a defect in their high way betwixt Muddy river & Stony River, The Court orders that it bee repaired by the next Court, or the Towne to pay five pounds.

Roxbury & Dedham presented

The Townes of Roxbeery & Dedham presented for breach of Law in not renewing their Markes in the line betwixt their Townes according to the law page 6: Sect. 1.<sup>1</sup> The Court appoints Capt<sup>a</sup>

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<sup>1</sup> The reference is to The Book of the General Lawes and Libertyes, 1660. "*For as much as the bounds of townes, and of the lands of particular persons, are carefully to be maintained, & not without great danger to be removed by any, which notwithstanding by deficiency & decay of marks, may at unawares be done, wherby great jealousies of persons, trouble in townes, & incumbrances in Courts doe often arise, which by ane care & meanes might be prevented. It is therefore Ordered by this Court & Authority thereof; That every towne shall sett out their bounds,*

Thomas Savage & Capt<sup>a</sup> Hopestill Foster as a Committee, to hear the differences between the Townes & to make return to the next Court of this County, the Committee to appoint the time.

MARY WALES pu<sup>r</sup>sentm<sup>t</sup>

Mary Wales of Dorchester presented for reproachfull words against M<sup>r</sup> William Stoughton & the rest of the Select men of Dorchester M<sup>r</sup> Stoughton owned [87] in Court, she had given them Satisfaction. The Court orders her to pay fees of Court & soe is discharged.

JON<sup>a</sup> ADAMS & Wife presented made default

Jonathan Adams & his wife of Medfelde, presented for absenting themselves from the publike worship of god on the Sabbath dayes, the persons being Summoned & making default in appearance. The Court orders an Attachm<sup>t</sup> to bee issued forth for them against the next Court.

Brantery present<sup>d</sup>

The Towne of Brantery presented for defect of a Schoolemaster answer was made they were Supplied.

SAMPSON SHOARE presented

Sampson Shore Constable of Hull presented for refusing to serve a replevin according to his office the presentm<sup>t</sup> not being proved fell.

Committee about MAHOON's estate

The Court appoint's M<sup>r</sup> Anth<sup>o</sup> Stoddard & Capt<sup>a</sup> W<sup>m</sup> Davis as a Committee to Set out & devide the remaining part of the Estate of Dorman Mahoone; which was left of that Set out to his son Daniell

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within twelve months after their bounds are graunted. And that when their bounds are once sett out; once in three yeares three or more persons of a towne, appointed by the Select men, shall appoint with the adjacent townes, to goe the bounds, betwixt their said townes, & renew their marks; which marks shall be a great heape of stone, or a trench of six foot long & two-foot broad, the most ancient towne to give notice, of the time & place of meeting for this perambulation; Which time shall be in the first or second month, upon paine of five pound for every towne that shall neglect the same; provided that the three men appointed for perambulation shall goe in their several quarters, by order of the select men, and at the charge of the several townes."

by a Committee of 7<sup>br</sup> 1668 equally between his second son David & daughter Margaret & to make return thereof to the next Court of this County. made their return this Court.

[ See John H. Edmonds, Dorman Mahoone alias Mathews, an early Boston Irishman. Proceedings of the Bostonian Society, January, 1917, pp. 44-71.]

#### LOUE's sentence

Richard Loue, bound over to this Court, for wounding Joshua Hews jun<sup>r</sup> in the head by throwing a stone at him which was proved against him. The Court Sentanceth him to pay five pounds in Money fine to the County & fees of Court; vpon his petition The Court remitted forty Shillings of his fine.

#### WAY's bond forfeited

Leiv<sup>t</sup> Richard Way being bound in a bond of                      for his Servant                      appearance at this Court, who being called for Leiv<sup>t</sup> Way made answer hee was run away vpon which the Court declared his bond forfeited.

#### NUEPORT, GRAVES & TUCKERMAN sentenced

Ruth Nueport, Deliverance Graves & Elisabeth Tuckerman, bound over to this Court for keeping riotous Company at unseasonable times of night & disturbing their Neighbours The Court Sentanceth the saide Nueport & Graves, considering the imprisonment they have suffered to be admonished in Court & pay fees & Elisabeth Tuckerman to pay fees of Court.

#### LEWIS sentenced

John Lewis, being bound over to this Court for abuseing of the Watch, of which hee was convict. the Court Sentanceth him, to pay fifty Shillings in money fine to the County & fees of Court. standing committed till hee performe it.

#### JUDKIN Sentanc't

Sammuell Judkin, bound over from the Court of Assistants to this Court on Suspicion of being naughty with Sarah [88] an Indian Squaw. The Court Sentanceth him to be whip't with twenty Stripes

or to pay five pounds in Mony fine to the County & fees of Court, & to pay charges of prosecution standing committed till the Sentence bee performed.

#### LONG'S sentence

Joseph Long of Dorchester presented for Selling Sider by retaile contrary to law, which hee owned in Court. The Court Sentenceth him to pay five pounds in Mony fine to the County & fees of Court. Vpon his Peticion the Court remitted halfe his fine provided hee pay the other by the next County Court.

#### COLLINS sentenced

Robert Collins, bound over to this Court, for running away from his Master with M<sup>r</sup> Sammuell Shrimpton's Sloope which hee owned in Court. The Court Sentenceth him to bee Severely whip't with twenty Stripes & to pay fees of Court, standing committed till the Sentence bee performed.

#### PEMERTON'S sentence

John Pemerton, committed to Prison for having a hand in conveying away Capt<sup>a</sup> Mosely's Servant & others from theire Masters, it not being proved the Court Sentanceth him to bee admonished & to pay fees of Court.

#### LAWSON sentanc'd

Christopher Lawson, being committed to prison till hee founde Security for the good behaviour, the Court orders him to pay fees of Court & prison & soe is discharged

#### GOLD sentenced

Benjamin Gold, convicted for playing at Cards & keeping bad company, the Court Sentanceth him to pay five Shillings in Mony fine to the County & fees of Court & the Select men of Boston are to put him forth as a Servant to M<sup>r</sup> John Paine of Hog island or some other good Ma<sup>r</sup>.

#### BEDWELL sentanc'd

Sammuell Bedwell, convict for Stealing severall goods from his Master Godfry Armitage & others. The Court Sentanceth him to bee whip't with fifteen Stripes & to pay fees of Court & prison standing committed till the Sentence bee performed.



## HALL sentenced

George Hall, convict for Stealing Linnen from Severall persons. The Court Sentanceth him to bee whip't with twenty Stripes & to pay fees of Court & prison standing committed while the Sentence bee performed: and the persons to whom the Linnen belongs to take every one their owne.

## MASON sentenced

Christopher Mason, convict of getting M<sup>r</sup> Rock's Negroe maide Bess with Childe, which hee owned in Court. The Court Sentanceth him to bee whip't with twenty Stripes & to pay fees of Court & prison & to give in bond of twenty pound for the good behaviour till the next Court of this County. M<sup>r</sup> Joseph Rock acknowledged himselfe bound in the Summe of twenty pounds to the Treasuror [89] of the County of Suffolke, on condicion his man Christopher Mason shall bee of good behaviour till the next Court of this County & then appeare if in the Country.

## JOSEPH Indian sentenced

Joseph an Indian, convict of drunkenness & abuseing severall persons in his drinke, The Court Sentanceth him to bee whip't with ten Stripes & to pay Fees Court & prison & charge of Witnesses, standing committed till the Sentence bee performed.

## MARY PLUMB sentenced

Mary Plumb, convict of Lascivious carriage by being seene in bed w<sup>th</sup> a man. The Court Sentanced her to bee whip't severely with fifteen stripes & to pay fees of Court & prison & to stand committed to the house of correction till the Select men of Dorchester provide a meete service for her.

## Order to THO: SMITH

Vpon the Motion of Thomas Smith concerning Sara: Blacklock, The Court orders that the saide Smith get Goodwife Baxter, Goodwife Smith, Midwives; & the Midwife hee brought out of England; w<sup>th</sup> M<sup>rs</sup> Parker & M<sup>rs</sup> Sandys to repaire to the prison & to Search

saide Blacklock, whether ever she hath had a Childe & to make return thereof to the adjournm<sup>t</sup> of this Court.

[ See above, pp. 128, 149, 164-5, and below, pp. 189, 237.]

#### STEVENS Sentenced

Aron Stevens, being convicted for Enticing Servants to run away from their Masters; The Court Sentanceth him to bee whip't with ten Stripes & to pay fees of Court & prison.

#### WALDREN & SMITH's bond for arbitracion

Isaac Waldren, as Attourny to his Brother William Waldren & Christopher Smith appeared in Court Nov<sup>r</sup> 6. 1672. & mutually agreed to put all matters of difference whatsoever between them to reference, & the s<sup>d</sup> Waldren chose Liev<sup>t</sup> Richard Cooke, & saide Smith chose Capt<sup>a</sup> William Davis and the Court appointed Capt<sup>a</sup> Thomas Lake as vmpire in case the other two doe not agree, & the parties aforesaide bound them selves each to other in the Summe of two hundred & fifty pounds apeice in Money to stand to their award according to law as a finall determinacion, the saide award to bee given in in fourteen dayes next following.

[ See above, pp. 135, 158, 163-4, and below, pp. 193, 202]

#### GOULDING sentenced

Peter Goulding, convict of antedating Writings & stirring up persons to goe to law, and buiing of Debts to Vexe others with Suites. The Court Sentanceth him to bee disinabled for pleading in any Court as an Attourny or Assigne (except in his owne case) and that hee doe not undertake to draw up any writings for others without allowance of Authority & to pay the charges of prosecution & fees of Court. [90]

#### order to y<sup>e</sup> Treasuro<sup>r</sup>

The Court orders the County Treasuro<sup>r</sup> to repaire the bridge at Roxberry neere the fulling Mill.

## JONES licence

M<sup>rs</sup> Dorothy Jones had Licence granted her to sell bottle Sider.

## Return of the Committee for devid the land of DORMAN MAHOON

In pursuance of the order of this honoured Court, Wee whose Names are under written, haue devided the Land of the late Dorman Mahoone as followeth, one moity from Heugh Drury's corner post of his fence up the Streete South seventy seven foote in front, from Heugh Drury's post west forty two foote, from thence cross the ground to a post mark't in Emmans' Fence forty six foote, from saide post to the Street on a streight line & this to bee one single divicion.

The rest of the land from Emmans' corner post by the lane towards the feilde sixty eight foote & halfe, thence along Heugh Drury's fence to a marked post eighty five foote, thence to a post in Emmans' fence marked 46 foote, provided if David possess the first Dividend hee must remove the frame to the other Dividend where they will haue it Set.

Dat. in Boston Nov<sup>r</sup> 6: 1672.

Anthony Stoddard  
W<sup>m</sup> Davis

[ See above, pp. 182-3.]

## [Order to MATHER]

In answer to the petition of Jonathan Atherton the Court orders that notice bee given to Timothy Mather to appear at the Adjournment of this Court to answer saide Atherton's complainte. afterwards vpon hearing of his being in Towne the Court sent for him presently.

Petition of RICH<sup>d</sup> THAYRE answered

In answer to the Petition of Richard Thayre of Brantery concerning differences between him & Joane Pray widow. The Court appoint's Leiv<sup>t</sup> John Holebrooke, Leiv<sup>t</sup> Edmund Quinsey & Capt<sup>a</sup> Richard Bracket as Committee to hear the differences between saide Thayre, widow Pray & her son & to make return thereof to the Adjournm<sup>t</sup> of this Court.

The Court Adjourned to the 28<sup>th</sup> Novemb<sup>r</sup> 1672. [91]

The Court Met according to Adjournment<sup>t</sup>  
Present

JOHN LEVERETT Esq <sup>r</sup> Dep <sup>t</sup> Gov <sup>r</sup>	EDW. TYNG Esq <sup>r</sup>	} Assits
	W <sup>m</sup> STOUGHTON Esq <sup>r</sup>	

SETH FLINT's guardians

Seth Flint, Son of M<sup>r</sup> Henry Flint late of Brantery deceased, made choise of M<sup>r</sup> Richard Collicot & Serjant Richard Ellis for his Guardians; which they accepted of & the Court allowed.

Court order about PRAY of Brantry

Vpon Informacion given into this Court, by a Committee appointed by this Court, to hear the differences between Richard Thayre & Widow Joane Prey of Brantery concerning the saide Pray's Living in a house that endangereth her life, & refusing to accept of better provicion The Court orders that the Select men of Brantery veiw the saide Pray's habitation & if they finde it to bee dangerous for her & shee to bee wilfull, that then they secure her by providing some other habitation for her which shall not bee a weakning of her title to her now habitation.

MASON's discharge from treynings

Robert Mason of Milton is discharged from ordinary Treynings.

Freemen Sworne

M<sup>r</sup> John Winslow, Ephraim Savage, Joseph Wheeler & Manassah Beck all of Boston tooke the Oath of freedom of this Colony.

Marshall WAYTE adm<sup>r</sup> to BIGGLESTON

Marshall Richard Wayte, is appointed by the Court to bee Administrato<sup>r</sup> to the Estate of John Biggleston of Bristow Marriner deceased, who dyed on board the Ship SeaFlower Tho: Smith Ma<sup>r</sup> in her late Voiyadge from Jamaica, hee bringing an Inventory of s<sup>d</sup> Estate vpon Oath.

Order about POCOCKE

Vpon Caution given into this Court by the Selectmen of Boston against John Pocock residing in their Towne, The Court ordered the saide Pocock to depart the Towne



## WOOSTER sentenced

Constance Wooster convict of Stealing Severall peeces of linnen, from the wife of Joseph Stocker The Court Sentanceth her to return the saide Stocker her Linnen againe & to pay her six Shillings in Mony being that threefold restitution that the law requires & to pay fees of Court.

## CITTERN Sentenced

William Citterne, convict of Severall drunkennesses & owning his attempt to poison himselfe. The Court Sentanceth him to bee whip't with twenty stripes & to pay fees of Court & to stand committed to [92] to prison till the next Court of this County, except his Ma<sup>r</sup> procure an order from the Magistrates in Boston for his Liberty sooner.

## MOSANTO Indian sentenced

Mosanto Indian convict of going into the house of Nathaniell Clap of Dorchester in the night The Court considering his punishm<sup>t</sup> already by imprisonm<sup>t</sup> Sentanceth him to bee admonished & to pay the Charges of prosecution & fees of Court.

## PUGLICE Sentanc'd

Anne Puglice, convict of Selling Brandy contrary to Law. The Court Sentanceth her to pay five pounds fine in Mony to the County & fees of Court & to stand committed till she finde Sureties for her good behaviour, twenty pound bond her husband & ten pound apeice two Sureties.

## BLACKLOCK sentenced

Sarah Blacklock, convict of belying & falsely accusing her Selfe, in Saying shee miscarried of a Childe which was buried privately, who vpon Search made is judged never to haue had a Childe. The Court Sentanceth her to bee whip't severely with twenty Stripes, paying the charge of prison & Fees of Court is discharged & is to return to her Master & to serve soe much time as shall make good what time shee hath lost & pay her charges & the former order of Court to Tho: Smith concerning her is reversed.

[ See above, pp. 128, 149, 164-5, 185, and below, p. 237.]

## HODGES sentenced

M<sup>r</sup> Humphry Hodges convict of Vilifying & reproaching the Courts & theire proceedings. The Court Sentanceth him to pay ten pound in mony fine to the County & fees of Court the saide Hodges appealed & the saide Humphry Hodges as principle in twenty pounds & M<sup>r</sup> Richard Collicot & Thomas Clarke as Sureties in ten pounds apeice acknowledged themselves jointly & severally bound to . . . prosecute his appeale . . .

[Hodges was a friend of John Bonner, and the vilification in question was in connection with the judgment in *Bonner v. Ashton* (above, p. 97), one arising out of the voyage of the ketch *Recovery*. The main testimony (S. F. 1153.4) follows:

William Norman aged thirty Six yeares or thereabouts Testifieth & saith, that I this Deponent being in the Towne house with M<sup>r</sup> John Saffine on Saturday Last afternoone being the third of August, I heard a hot dispute between the saide Saffine & M<sup>r</sup> Humphry Hodges, about the Accion that was in Court betweene M<sup>r</sup> Henry Ashton & John Bonner; wherein the saide Hodges many times charged the saide Saffine with base unworthy dealings in that matter, saying five or Six Severall times over, that M<sup>r</sup> Saffine had gone in an underhand way & prepossessed the Deputy Governo<sup>r</sup> & the Jury with the case & there were three witnesses hee could bring that would take theire oathes of it; to which the saide Saffine replied tis a most notorious falsehood, for I never spake one word either with the Deputy,<sup>1</sup> or any one of the jury or any one of the magistrates, out of Court, to this very moment, & quoth hee this is a meere device to Salue yo<sup>r</sup> Selfe & cast the reproach upon mee, but they that make lyes theire refuges all Surely come to nothing, & as for yo<sup>r</sup> part M<sup>r</sup> Hodges you haue beene a meere jncendiary in this buisness & are as a reede of Egypt to Bonner for by yo<sup>r</sup> advice hee hath leaned upon you & you haue run into his hand, quoth M<sup>r</sup> Hodges I doe not vallue a Straw what the Court hath done, I will not give Ashton five pounds for all hee will get, why replied I (this Deponent) what doe you make Nothing of the Court & jury; quoth M<sup>r</sup> Saffine are the Court unwise & the jury fooles, & haue you all the wisdom, doth noe body understand anything but you, surely saide I this Deponent if a Court & jury bee nothing strangers will haue Little Encouragement to goe to law in New England quoth M<sup>r</sup> Hodges noe it is nothing for what one Court doth another undoeth. there was many more words to this purpose all which I this Deponent cannot remember, but as saide, Hodges did often charge M<sup>r</sup> Saffine for Endeavouring to corrupt the Jury & prepossess the Deputy, I this Deponent saw the Deputy<sup>1</sup> comming up the Streete towards M<sup>r</sup> Usher's, vpon which I saide looke yonder comes the Deputy hee'le end the buisness presently, come quoth M<sup>r</sup> Saffine to M<sup>r</sup> Hodges goe with mee to the Deputy & wee'le aske him whether it bee soe or noe, but M<sup>r</sup> Hodges would not goe, whereat M<sup>r</sup> Saffine replied what are you ashamed of yo<sup>r</sup> Craft, & to owne what you haue saide, quoth M<sup>r</sup> Hodges I doe not say you spoke with the Deputy but that

<sup>1</sup> Deputy-Governor Leverett.

there are three witnesses that will take their oaths of it whereupon M<sup>r</sup> Saffine went out to meete the Deputy & called mee this Deponent who further saith not. Sworne unto August 8<sup>th</sup> 1672 before Edw. Ting Assisist.

Four others testified to the same conversation (S. F. 1153.4). Respecting Hodges' appeal to the Court of Assistants, the following Answer (S. F. 1153.1) by Isaac Addington, Clerk of the County Court, appears to have been effective:

Answers to M<sup>r</sup> Humphry Hodges, his pretended Reasons of Appeale from the Sentence of the County Court held at Boston on adjournment. November 28<sup>th</sup> 1672

1: Whereas hee saith the fact hee is charged with doth consist in matter of words: to this I answer hee may not onely legally bee charged but alsoe justly Sentanced for reproachfull words when legally proved as these are; alsoe the appealant seemes to insist much upon the words of his bond, that noe other matter is hee bound to answer to, but such words as tend to the reproach of the Dep<sup>t</sup> Governo<sup>r</sup> in this the appealant Subtilly misinformes this hono<sup>rd</sup> Court & leaues out the halfe of his charge, being bound over as well for reproaching the Jury as the Dep<sup>t</sup> Governo<sup>r</sup> & whereas hee argues from the word (tending) that what hee hath saide falls short of a reproach in good reason & law to this I answer though hee bee onely bound over to answer for words tending to the reproach of the Dep<sup>t</sup> Gov<sup>r</sup> & the Jury, yet upon the tryall of the case the matter being proved to bee reproachfull hee is justly Sentanced for the Sam[e] As for instance a person being committed upon Suspicion of theft if upon the tryall it bee proved against him, hee is Sentanced for his theft, notwithstanding his Mittimus bee but upon Suspicion; alsoe the appealant saith the words are not certainly or legally proved, that I leaue to the wise consideration of this hono<sup>rd</sup> Court whether three positieue Witnesses make not a legall prooffe; neither are there such contradictions & disagreements in the Evidences as the appealant would seeme to make, for two of the Witnesses agree in his saying positieuely that m<sup>r</sup> Saffin went in an underhand way & prepossessed the Dep<sup>t</sup> Gov<sup>r</sup> & the Jury with the case, & what could this doe less then reflect dishono<sup>r</sup> both upon the Dep<sup>t</sup> Gov<sup>r</sup> & the Jury, to say they had received a preinformation of a case they were to judge of from one of the parties: and whereas the appealant Saith the Dep<sup>t</sup> Gov<sup>r</sup> was pleased at his tryall to say hee did waue & pass by the whole matter that concerned himselfe; if the appealant could as truly haue said the whole Court had done soe, by what was Evidenced against him, then had it been a good reason; but though the Dep<sup>t</sup> Gov<sup>r</sup> passed it by, yet the rest of the Court, who were the proper judges of the case did not, as appears by their Sentence.

2. To his 2<sup>d</sup> Reason, Whereas the Appealant saith, notwithstanding all before saide & done in the pu<sup>r</sup>mises, hee was Sentanced to pay ten pounds in mony for villifying & reproaching the Courts & their proceedings, grant it bee soe, yet legall enough being Sentanced for what was proved: & whereas hee saith hee never knew any man accused for one thing & condemned for another as by his bond & judgment will appeare, being contrary to common reason & practice of Courts: I humbly conceiue the appealant is under a mistake; for hee is Sentanced for what was proved against him upon his tryall & that very legally, & according to practice of Courts; as for instance a man may bee bound over for a Riott, yet vpon the tryall it may fall short of prooffe, but if it bee proved against him that hee did



Swear or was drunck, hee may bee legally Sentenced for his oaths or Drunkenness though not bound over to answer for them, yea many times a man is Sentenced for a Fact committed in Court, neither doth the law say a man shalbee Summoned six dayes beforehand to answer for a crime: and whereas the appealant passes his judgment on the Court's Sentence to bee contrary to common Reason & practice of Courts, because the Court's Sentence & his charge in the bond are not in all the terms of it alike this is a gross mistake for the Sentence ought not to bee compared with the bond onely, but with the Evidences on which it is grounded: alsoe hee saith that the Testimonies of Norman & Seymor differ in the very essentiall word that altereth the whole Sence & applicacion of the words; I answer noe such difference appeares; for the one saith hee valued not a Straw what the Court had done, & the other hee valued not a Straw what was done, which must necessarily imply the Court, by his following words of what one Court doth another undoeth, so that by both theire Testimonies & alsoe by Will<sup>m</sup> Shutes it plainly appeares hee had a very slight Esteem of the Courts proceedings; & although the case on Bonner's side were never soe just, yet it did not then soe appeare to the Court by the proofes before them as hee himselfe confessest, when hee saith the Courts judgment might bee just to cast it as they did, neither doth the Equity of Bonner's case justify the Appealant's reproachfull Speeches, notwithstanding all his elaborate paines in unravelling of the Testimonies in his pretended vindication: Whence the discourse arose is unknown & whether the Witnesses had malice or noe it matters not, Malice may bee a good informer though not a judge: and whereas the Appealant soe much reflects on the Evidences in Saying they Sweare carelesly & desparately, his soe Saying doth not make it soe & although Irish men & Strang<sup>rs</sup> yet might their Oaths bee as true as Englishmens & inhabitants & are as valid in law.

3. To his third & last Reasons, wherein hee objects a mistake in the judgment in that it saith hee is convicted for reproaching & villifying the Courts and their proceedings in y<sup>e</sup> plurall number & an Erro<sup>r</sup> in judgment Nulls the judgment. I answer the Evidences doe Speake of his reproaching more Courts then one & therefore is the judgment according to Evidence & noe mistake in judgment. And whereas in the close of his discourse hee doth humbly craue that hee may haue the benefit of y<sup>e</sup> law & priviledge of a Subject making his application to the Gentlemen of the Jury as they are upon their Solemn Oaths, not to haue respect of persons pretending to stand up for the liberty of the people. To this I answer the Appealant hereby, (notwithstanding a great flourish of a vindication & cleering of his jnnocency) as to his reproaching the Courts, seemes highly to reproach the very Court appealed from as if hee were there denied the liberty of the law or priviledge of a Subject; which if hee thereby jntends a tryall by a Jury; I answer it was never denied him neither did hee ever move it; I know not what else hee should jntend by y<sup>e</sup> benefit of y<sup>e</sup> law or a Subject's priviledge, without hee should desire a priviledge which I thincke few Subjects but himselfe would, to villify & reproach Courts at his pleasure & to goe unpunished for it, & the appealant Seemeth to bee somewhat conscious of his guilt herein in the very last expressions of his reasons wherein hee craues pardon of this Court. I shall humbly leaue the consideracion & jssue of the whole Matter to the wise Determinacion of this hono<sup>rd</sup> Court & Subscribe mySelfe.

Yo<sup>r</sup> Worship's most humble Servant Isaac Addington Clarke of the County Court of Suffolk, by appointm<sup>t</sup> of the saide Court]



## Court order about JARRETT

The Court orders that James Jarrett bee continued in prison till the next Court of this County except the Magistrates of Boston see cause to the contrary.

## JOHNSON'S Licence

M<sup>rs</sup> Abigaile Johnson had licence granted her to Sell Sider by the quart, but not above two pence per quart shee giving in bond to observe the law with Sureties. [93]

## JOHN MARSHALL'S addicionall Salery

Vpon the Motion of John Marshall for an addition to his Salery for looking to the Towne house. The Court orders the Treasuro<sup>r</sup> to pay him ten shillings per annum more then formerly.

Return of arbitrato<sup>rs</sup> concern: SMITH & WALDREN

Vpon the return of the Arbitrato<sup>rs</sup> concerning the cases between Christopher Smith & William Waldren that they had done nothing therein nor could finde any ground to bottom an award vpon. The Court declares that the Verdict of the Jury stands good & the party cast hath liberty to enter an appeale according to law.

[ See above, p. 186, and below, p. 202.]

## Order about BUMPAS

Hannah Bumpas, being founde by Articles of confederacion to bee an inhabitant of Hingham. The Court orders y<sup>t</sup> the saide Bumpas bee sent down thither & that the Select men of Hingham take care of & make that provicion that is meete for her & that the Clarke grant a Warrant to the Constable of Boston to send her thither

[ See below, pp. 219, 225.]

M<sup>r</sup> DUDLY'S Peticion answered

In answer to the Peticion of M<sup>r</sup> Joseph Dudley & Sammuell Hunting adm<sup>rs</sup> to the Estate of M<sup>r</sup> John Allen deceased. The Court empoures them to Entrust some meete person to take care of the Estate of M<sup>r</sup> John Allen his son soe as it may bee Secured & emproved for his interest

## Caution against BEST

Vpon Caution given by the Select men of Boston against Nicholas Best residing in their Towne. the saide Best appeared in Court & saide hee was to depart in two or three dayes to Virginia.

## AVERIES Allowance

In answer to the Petition of Serjant William Avery of Dedham The Court allowes him to practice physick & Chirurgery.

## PAINE to ATWATER

M<sup>r</sup> John Paine appeared in Boston the first of feb<sup>ro</sup> 1671, before Majo<sup>r</sup> Eliazer Lusher & Edward Ting Esq<sup>rs</sup> and acknowledged a judgment against himselfe & Estate to m<sup>r</sup> Joshua Atwater for twenty four pounds in mony due by bill this done as aboues<sup>d</sup> as Attests Free Grace Bendall Cler.

Execucion issued 21. 8<sup>br</sup> 1673.

this mis't Entry in its prop<sup>r</sup> place. [94]

At a County Court held at Boston January 28<sup>th</sup> 1672.

Present

JOHN LEVERETT Esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup>      EDW. TYNG Esq<sup>r</sup>  
W<sup>m</sup> STOUGHTON Esq<sup>r</sup>      Assits

Grandjury Sworne

James Everell	Tho: Cheeny	Tho: Don
Simon Rodgers	Rich <sup>d</sup> Withington	Benj <sup>a</sup> Bates
Jn <sup>o</sup> Pease	Nicholas Clap	Tho: Lincolne
Rich <sup>d</sup> Woody	Tho: Swift	Jn <sup>o</sup> Aldis
Rob <sup>t</sup> Williams	Edm <sup>d</sup> Shefeild	Nathan <sup>ll</sup> Fisher
		Jn <sup>o</sup> Medcalfe

Jury of Tryalls Sworne

m <sup>r</sup> Simon Lynde	Joseph Holmes	Nathan <sup>ll</sup> Baker
Edw <sup>d</sup> Willis	W <sup>m</sup> Salisbury	Tho: Andrews
Nathan <sup>ll</sup> Johnson	John Ruggles	John Bacon
Isaac Jones	Tho: Pratt	Ralph Day

[BICKNELL v. ANDERSON]

John Bicknell plaint: cont<sup>a</sup> John Anderson Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: December 7<sup>th</sup> 1672: The plaint: in failor of process was Non Suited.

[HENCHMAN v. ROCK]

Daniell Henchman, plaint: cont<sup>a</sup> Joseph Rock Defend<sup>t</sup> in an accion of the case for that hee the saide Rock hath not performed Articles of Agreement relating to partnership between them & before the consummation of such Articles proposalls being made for the cessation of the saide partnership, which by the saide Rocke were accepted & the saide Rock promised to return the Estate of the saide Henchman againe, & thereupon tooke possession of all from the saide Henchman & now refuseth to make good the same, to the vallue aboue five hundred pounds, which is to the great dammage of the plaint: with other due dammages according to Attachm<sup>t</sup>. Dat: Novemb<sup>r</sup> 26: 1672. . . . The Jury . . . finde for the plaint. five hundred thirty Eight pounds ten shillings & four pence mony & costs of Court: the Defend<sup>t</sup> Appealed from this Judgment to the next Court of Assistants & accordingly the saide Joseph Rock as principall in one thousand pounds & James Brading & Tho: Dewer as Sureties in five hundred pounds

apeice acknowledged themselves respectively bound to . . . prosecute his Appeale . . .

[Henchman and Rock conducted in partnership a store of general merchandise (account in S. F. 1162.8), and also owned cattle and negroes in common. There was a dispute over the accounts, and several offers of Henchman to buy out Rock were refused (S. F. 1162.4). Henchman's daughters testify to the relations between the families (S. F. 1162. 12, 13):

Hannah Henchman aged about 20 yeares saith that soe long as m<sup>rs</sup> Rock disposed of all the milke, & sent mee over what & at such times as she pleased, there was noe difference, but from the time it was to bee equally devided there was a continuall disturbance by m<sup>r</sup> Rock about chopping & changing what was still agreed on, about the milking of the Cowes & on a munday morning about the 2<sup>d</sup> weeke in the month of July. 1671. my Father examined Will: Lamb about taking mony from her brother Richard, who daily tooke an acco<sup>t</sup> of things & Saying the partnership was broke & forbidding him to meddle further; Hee replied yes his m<sup>r</sup> or m<sup>rs</sup> Rock bid him & told him soe & hee must doe according to order & that night m<sup>r</sup> Rock's Servant milked her Father's Cowes as well as theire owne & soon after & next morning a pot of milk was sent us from m<sup>rs</sup> Rock but returned back & alsoe the same night all the dores were locked up, & the bunches of Keys carried away ever after which used to bee brought to my Father's, soe that one night my Father was locked out of dores, the same week m<sup>r</sup> Rock came & sent often to haue the Shop cleered of my Father's goods for him, which hee tooke possession off the same weeke & therein of Severall goods with an jnvoice of them, which her Father would giue him an account of although hee saide there was noe need soe to doe; after this wee were Severa[l] times denied water at the pump & m<sup>rs</sup> Rock in a flouting manner calling out to mee, saide Hannah here is water to wash yo<sup>r</sup> milk pots in, pointing to that shee had rinsed her Cloathes in: but I replied not, being charged by my father to bee quiet, whatever affronts were offered, & at another time she comming into the house I heard her wish that we were gone.

Sworne in Court. 28: 11<sup>mo</sup> 1672. Attests Isaac Addington Cler . . .

Ann Henchmann aged about 30 yeares, saith that. . . soon after this wee were denied water our pail sometimes thrown away & the pin at other times taken out of the pump; & once o<sup>f</sup> Negro comming from the pump without water told mee something of the woman & the pin, upon which I went to the pump & founde the pin taken out & m<sup>rs</sup> Rock laughing with her armes acimbow, whereupon I went my Selfe before & after to Fetch water abroad, yet was water given away daily & m<sup>rs</sup> Rock's clothes brought over to rince which was never soe before, & farther saith that a few dayes before the Court of Election, wheat was Laide in the Chamber over the Hall, for want of roome as I understood.

Sworne in Court: 28. 11<sup>mo</sup> 1672 Attests Isaac Addington Cler . . .

Rock's reasons of appeal (S. F. 1162.3) follow:

Joseph Rock his Reasons of Appeale from the Judgment of the County Court held in Boston 28<sup>th</sup> Jan 167 $\frac{2}{3}$  in the Case between M<sup>r</sup> Daniell Henchman plantife and Joseph Rock defendant



1 Because the Jury erred in giuing a verdict against The Said Rocke for 538<sup>li</sup> 10<sup>s</sup> 4<sup>d</sup> money and Cost of Court; which will appeare to bee an Errour; In that the thing Sued for in the proses, is for not performanc[e] of Articles Relating to partnership, and the manner how these Articles are not performed, is declared in the sd proses to bee, by not performance of proposals for the Cessation of the sd partnership wich were accepted by the said Rock, and the Sd Rock promised to Returne the Estate of the S<sup>d</sup> Hinchman Againe & ther upon tooke posetion of all from the sd Hinchman; and now Refuseth to mack good the same; to the vallue of aboue fiue hundreded pounds; The Articles being duly Considered doe not bind Rock to brack of partnership but to hold it Seuen yeares, nor doeth the Articles say Rock Shall Returne the estate to the said Hincksman againe; nor doe they admitt of action one against anoth[er] hauing provided that Such deferences Shall be determined by frinds there in Expresed, Soe that there is noe Cause to Sue me for Breach or not performance of Articles, as in Exprese terems he doth, Neither is there any Reason that Judgment Should be obtained Against mee Except that I had broken the S<sup>d</sup> Articles which I haue not done, But if the Jurey Concluded that M<sup>r</sup> Hinchman Sued for his Estate to be made good or Returned to him, by vertue of the proposells for the Braking of partnership, They were (in my opinion) in a duble Error; First M<sup>r</sup> Hinchman doeth not Sue for his Estate to be Returned, Except it be according to the Articles or else quit[e] Contrary to the Articles, Now if it be according to the Articles that hee Sueth there is noe Cause of Action be Cause the partnership [is] to Continue Seauen yeares, Or if it bee quite Contrary to the Articles that he soe demands, Why doth he sue for non performance of them, by not deliuering the Estate, there is such A Contradiction in the Attachment as Renders it Fondementally Erronious; The Case is not here under stood, whether M<sup>r</sup> Hinchman Sued for not performance of Articles or not performance of Collaterale proposalls, If they are Called two Accitions in one Attachment I Answare; It is not Rationall for two Accitions in one Attachment, to be for one and the same thing, Neither is there two Actions But one Action grounded upon two Cases that are absolutly Contrary one against another, Soe if one doe stand the other must fall Heare is an Estate Sued for to be made good by the Articles and Contrary to the Articles by the proposells, If Such proses are Right who will feare euer being Non Suted or Cast

2 The secount Reason of Appeale, is because the proposells for disoluing the Articles of partnership was neuer Consumated and Consequently the Articles not Nullified but yet stand good against and for both parties, now if the Articles are not Nullified nor the partnership disolued it is very aparan[t] the Judment against Rocke is erronious That the proposill was not Cunsumated will Euidently Appeare by the particalers following which I Humbley begg this Honoure[d] Court and Jurey to be Serious in the Consideration of & I hope y<sup>t</sup> will giue Light to a Right Consideration of the Case

i The proposells were neuer Concented unto nor understood, by both parties if by either of them, and for the prooffe of this I referr the Court and Jurey to that Numerous Company of Euedences, which M<sup>r</sup> Hinchman produced against me, Amongst all which there is not one Expresseth that there was a full Agreement betweixt us, but they all in one agree thatt at all oure metings and in all oure discourses there was deferences betwixt us about the intrest of Money and Lost of Negroes & The Quantaty and Quality of what M<sup>r</sup> Hinchman had put in to partnership, Soe fare then are these proposells from Nullifieng the partnership,

that they were not agreed upon and neuer Amounted to the vallidatie of a Verble Bargaine, It is true if M<sup>r</sup> Hinchman would haue bine as Good as his word, in for baring the Money for A yeare with out Interest & in alowing his part of the Lost of Negroes and giueing A Sattisfactory accoumpt of his transactions in the time of his keeping of his accoumpts, and had Cleared yet to me by his accoumpt Corrant and other Accoumpts how much he had truly put in to Stock, Then had there bine a verball Bargaine betwixt us for the Cesation of partnership, and I must haue Returned him his Money Accordingly; If it Could be Judged good in Law That a verble Bargaine were Sufficent to Null and desolue Aarticles of agreement vnder hand and Seale; A pressedent for which is not to bee found as I humble Conceue Especially were the teremes of the verball Bargaine or rathere proposalls was neuer performed now agreed to How then can the artacles be disolued; which I leue to Consideration; For that Articles and all Couinents under hand and Seale are not Nullified Except by Sume act good in Law of Like vallidity

2 M<sup>r</sup> Henchman owned that the Artacles were not to be Conseled untell Rock had performed his agrement for desolving them as by M<sup>r</sup> John Hull deposetion, If soe then the Question is whether Rock hath performed his agrement, If he hath not Then are the artacles good and the Judgment Wronge, if he hath performed his agrement then there was noe Chanse of action

3 My Remaning in possetion or M<sup>r</sup> Hinchman Leauing possession may if it be said I E[ly]cited or disposed M<sup>r</sup> Hinchman of all yet doeth not that either disolue the Articles nor Conferme and Consumate the proposalls It doth not disolue the Artacles for by them may he Sue for and obtaine possetion againe or the forfuture of A Thousand pound, nor doeth yet Consumate the proposalls which can not be Confermed Except the Artacles bee Nullified, it can not be Reason that be cause M<sup>r</sup> Hinchman hath left me in possetion that I must therefore be bound to Such termes as was Neuer agreed upon

4 Again it will appeare from the Bond of Arbitration Dated 24<sup>th</sup> of August 1672 That the Articles of Partnership was not disolued Nor the proposalls Conseumated, by Caus the Thing put to Arbitration was Seuerall Question Doubtes and deferances depending betwixt Joseph Rock and Daniell Hinchman, about Partner Shipe and accoump[t] there unto Refering. And not at all relating unto the deferances betwixt them Concerning the terems vpon which the Partnership Should cease or End. This Euidence under hand and Seale of Hinchman, as wele as Rock I hope it is plainly demonstrated that y<sup>e</sup> Articles of partnership are not Nullified nor the proposall confermed Therefore the Judgmen not Right

3 The thurd resan of Appeale, Is be Cause that upon the Suposition that the Articlcs was Nulled, And the partnershipe disolved, by the proposalls, And that Rock was bound to make good M<sup>r</sup> Hinchman estate which he had in partnership, yet is the Judgment Eronious, in Regard it is founded upon a Ronge Basis, as will Appeare by the following particulers being Considered

Either the Judgment was grounded upon the Accoumpt, which M<sup>r</sup> Hinchman gaue in and Sworne unto or else upon the Testimones,

i If upon the Accoumpt there was no Ground to find against Rock By that, as may Appeare by M<sup>r</sup> Hinchman proposalls for Agrement upon which the partnership was to seace upon In which he hath Expresely Said that M<sup>r</sup> Hinchman was to deliuer Rock the s<sup>d</sup> Hinchman Accoumpt Curant of what the Stock was Debter to him upon oath, I Begg the Court and Jurey to Compare the Accoumpt which he Sued me upon and unto which he did take his oath in Court,

with the proposalls and it will planily Appeare that the Accountt is Intiteled Sock in partnership betwixt Joseph Rock and Daniell Hinchman Debter, And not Daniell Hinchman his accompt Curant Debter, Soe that the Accountt by which he Sued is not the Accountt by which I was Bound by according to his one Confesion If he will Sue me for Not acting according to them proposalls and deliuering his Estate, he Should haue Sued by the Same Accountt which according to the proposalls was to determen how much that Estate was and not by any other Accountt

	<i>li s d</i>
2 Again the Judgment Could not be grounded upon this Accountt Because the Ballance of the Accountt being . . . . .	591—15—01
doth not agree with the Judgment which is for . . . . .	538—10—04
Soe that there is deferance betwixt the Ballance Sworne to and the Judgment . . . . .	053—04—09

It is plaine y<sup>t</sup> the Accountt is fals or at Least not Appeareing True to the Jurey, If the Judgment was Grounded upon the Accountt They Should haue found ether the Ballance or Nothing

3 Again if the Judgment was grounded upon the Testimonies as it Appeares it was It being Agreeable to Cap<sup>t</sup> Savedges Testimones and M<sup>r</sup> Brattels, which Say that by M<sup>r</sup> Hinchman[s] Books he is Creditor upon y<sup>e</sup> Accountt of Ballance 538<sup>li</sup>—10<sup>s</sup>—4<sup>1</sup>/<sub>2</sub><sup>d</sup> which is with in a halfe penney of the Judgment If it be grounded upon these testimonies it hath no Ground at all being Rightly Considered,

i M<sup>r</sup> Brattell and Cap<sup>t</sup> Savedge was not made Auditors of the Accountt by the Court in this Case therefore there Testimonies noe Euidence to the Jurey Concerning the truth of the Accountt

2 They doe not Affirme that there is 538<sup>li</sup> 10<sup>s</sup> 4<sup>d</sup> due to M<sup>r</sup> Hinchman to Ballance Butt Cap<sup>t</sup> Savedge Saeth that M<sup>r</sup> Hinchman is Credetor Soe much upon the Accountt of Ballance in his Bookes and M<sup>r</sup> Brattell Saeth there was Soe Much due by the Ballance of the accompt of Cash, and both they and all the Rest of the witnesses doe not Affirme the Accountt to be true, the most they say they appeare Soe to them as they are Stated, they are farr from Attesting them true; That they onely declare the see noe Errors and thinke them True

3 M<sup>r</sup> Hinchman onne oath to the Accountt put in to Court, that it is a True and Just Accountt to his Knowledge proues his Accountts in his Bookes not to be true By 53<sup>li</sup> 04<sup>s</sup> 09<sup>d</sup> and Richard Hinchman in his oath Mentions 545<sup>li</sup> 01<sup>s</sup> 08<sup>d</sup> to be payd in by his Father Soe that heare is two oathes M<sup>r</sup> Hinchmans and his sonne to proue that the Ballance of 538<sup>li</sup> 10<sup>s</sup> 4<sup>d</sup> is not Right which Cap<sup>t</sup> Savidge and M<sup>r</sup> Brattell doe not Affirme is true, I Leauie it to the Honoured Court and Jurey to Conceder what Littell Ground the Jurey had Soe to find against me Concedering the premises which I suppose are Sufficiently proued

i That the proposalls was Neuer agreed upon Concentered to, or understood by both if by Either partys and therefore Could not Cutt of the Articles

2 That the Articles of Parnorship are not Broken nor the Partnership disolued, which doe not bind Rock to deliuer or Returne M<sup>r</sup> Hinchman his Estate

3 Then was there noe Resion why Such a Judgment nor Indeed Any Should haue bine Geuin in against me either by the Accountt produced in Court and Sworne too, or by y<sup>t</sup> Testimony which Accountt and Testimony are Soe Contradictory one to the other, I pray pardon for my prolixity It is not my desire



to doe M<sup>r</sup> Hinchman Ronge Neither would I be to great a Sufferer by Him, The Lord direct this Honored Court and Gentellmen of the Jurey to a Rrigh Judgment the which is the prayer of him who is your humble Sarvent  
Joseph Rock

These Reasons were received by the hands of m<sup>r</sup> James Brading Feb<sup>y</sup> 26<sup>th</sup> 1672 about: 4: a clock afternoon

as Attests Isaac Addington Cler

Henchman's answers to these reasons of appeal are in S. F. 1162.5. They appear to have been effective.]

[ROBINSON guardians v. ROCK]

Anthony Stoddard guardian to Thomas Robinson, William Bartholomew guardian to James Robinson & Deacon William Parcks guardian to Joseph Robinson plaint<sup>s</sup> cont<sup>a</sup> Joseph Rock Defend<sup>t</sup> in a action of the case for perfidiously & fallatiously obtaining out of theire hands & violently deteining from them an Account given to them by the saide Rock & mutually by him & them examined & made up divers months since & paiment promised them, the ballance whereof was Seventy five pounds or thereabouts due from him to them for three parts of the saide ballance in the behalfe of the aforesaide Thomas James & Joseph Robinson, with all due dammage according to Attachm<sup>t</sup> Dat: Jan<sup>y</sup>: 15<sup>th</sup> 1672. [95] . . . The Jury . . . finde it not tryable in this Court the Damage being under forty Shillings.

[ Cf. above, pp. 109, 155, and below, pp. 210, 217, 241.]

GOODMAN cont<sup>a</sup> COCK

James Goodman, plaint: cont<sup>a</sup> Edward Cock Defend<sup>t</sup> in an accion of the case for deteining & not giving an account of a Chest with monys & severall goods in it as namely ten ounces & two Akees<sup>1</sup> of dust gold, four gold gemmell Rings, twenty peices of Eight four Nutmeggs a paire of Silver buttons with the linke broken one paire of woosted Stockins, as alsoe another Chest with tooles in it, all which perticulers were Shipped aboard the Catch Society at Carlile bay in Barbados the saide Edward Cock being master of the saide Catch

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<sup>1</sup> Probably a copyist's error for *Angels*. "Having treated of Gold at large, I am now obliged to say something concerning the Gold Weights; which are either Pounds, Marks, Ounces, or Angels. In Europe twenty Angels make one Ounce, though here but sixteen go to an Ounce." William Bosman, *A New and Accurate Description of the Coast of Guinea*, London, 1721 (2nd ed.), p. 75. We are indebted to Professor Leo Wiener for this reference.



Society, whereby the plaintiffe is much damnified with other due dammagés according to Attachm<sup>t</sup> Dated Decemb<sup>r</sup> 25<sup>th</sup> 1672. . . . The Jury . . . founde for the Defendant costs of Court.

CLARKE cont<sup>a</sup> BRIDGHAM

Richard Collicott, Humphrey Hodges Anthony Checkly or either of them Attourney to Thomas Clarke late of Plimouth plaint: cont<sup>a</sup> Jonathan Bridgham Executo<sup>r</sup> to M<sup>rs</sup> Elizabeth Bridgham late widow & relict of M<sup>r</sup> Henry Bridgham late of Boston deceased defend<sup>t</sup> in an accion of the case for that the saide Bridgham doth refuse to deliver unto the saide Clarke the summe of Forty six pounds ten shillings & a penny in mony, which is due unto the saide Clarke by virtue of a judgment granted him against M<sup>rs</sup> Bridgham at a County Court in Boston in July last to say, forty four pounds in mony damage & two pounds ten shillings & a penny in mony cost of Court, for want of which mony the saide Clarke is very much damnified with other due Dammagés according to Attachm<sup>t</sup> Dat: January 7<sup>th</sup> 1672 . . . the Jury & are on file with the Records of this Court. The Jury brought in thereire Verdict & founde for the Defend<sup>t</sup> costs of Court. The plaint: appealed from this Judgment to the next Court of Assistants & accordingly the saide Anthony Checkly as Attourney aforesaide as principall in forty pounds & Daniell Turill senio<sup>r</sup> & Sammuell Sendall as Sureties in twenty pounds apeice acknowledged themselves in open Court respectively bound to . . . prosecute his appeale . . . [96]

[ See above, pp. 5-9, 99-100, 130-31. It does not appear that the appeal was allowed.]

POPE cont<sup>a</sup> MINOT

John Pope, plaint: cont<sup>a</sup> Sammuell Minot Defend<sup>t</sup> in an accion of the case for deteining of an agreement made between saide Minot & the saide Pope for a parcell of land being twelue Acres, which the saide Pope bought of the saide Minot & hath according to contract in part paide for, & all due Damages according to Attachm<sup>t</sup> Dat: Jan<sup>ry</sup> 3<sup>d</sup> 1672 . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court. which was 9<sup>s</sup> 8<sup>d</sup>

WALDREN adm<sup>r</sup> to DUNCOMB cont<sup>a</sup> SMITH

William Waldren, administrato<sup>r</sup> of or to the Estate of Oliver Duncomb deceased plaint. cont<sup>a</sup> Christopher Smith Defend<sup>t</sup> in an accion of Reveiw of a judgm<sup>t</sup> granted the saide Smith against the s<sup>d</sup> Will<sup>m</sup> Waldron adm<sup>r</sup> &c. at a County Court held at Boston on the twenty ninth day of October 1672 where the Jury brought in their Verdict, they founde for the plaintiffe Twenty eight pounds six Shillings eight pence halfe penny, being one third part of the ballance, the saide plaintiffe being accountable to the partn<sup>rs</sup> in fellowship their parts of the Goods in the plaintiffes hand as is Specified in the Acco<sup>t</sup> upon Oath in the four last perticulers & costs of Court & other due Damages according to Attachm<sup>t</sup> Dated Novemb<sup>r</sup> 29<sup>th</sup> 1672. . . . The Jury . . . founde for the Defend<sup>t</sup> Costs of Court. The plaintiffe appealed from the Judgment of this Court to the next Court of Assistants. . . .

[ See next case.]

WALDREN cont<sup>a</sup> SMITH

William Waldren, plaint. cont<sup>a</sup> Christopher Smith Defend<sup>t</sup> in an accion of reveiw of a judgment granted the saide Smith against the saide William Waldren at a County Court held at Boston on the Twenty ninth day of October 1672 where the Jury brought in their Verdict, they founde for the plaintiffe on the ballance of Accounts Twenty eight pounds six Shillings eight pence halfe penny being one third of the ballance the saide plaintiffe being accountable to the partn<sup>rs</sup> in fellowship [97] their parts of the goods in the plaintiffes hands Specified in the account upon Oath in the four last perticulers & cost of Court & other due dammages according to Attachm<sup>t</sup> Dat. Novemb<sup>r</sup> 29<sup>th</sup> 1672. . . . The Jury . . . founde for the Defendant costs of Court. The plaintiffe appealed from the judgm<sup>t</sup> of this Court to the next Court of Assistants & accordingly the saide William Waldren as principall in fifty six pounds & Leif<sup>t</sup> Richard Cooke & John Vsher as Sureties in five & Twenty pounds apeice acknowledged themselves in Court respectively bound to . . . prosecute his appeale . . .

[ See preceding entry, and above, pp. 135, 158, 163-4, etc.. Waldron's reasons of appeal to the Court of Assistants (S. F. 1194.10) follow:

To the Honored Court of Assistance, William Waldrons Reasons of Appeale from the Judgment of A County Court held at Boston the 28<sup>th</sup> of January 1672 in an Action of Review, of A Judgment of A County Co<sup>t</sup> held in Boston October last

Inprimis For I gave into the said Court his Exceptions Against Christopher Smith, his Accompt, most of them proveing his Accompt falce, in most of the Articles thereof by wittness as reference being had to the said Exceptions may and doth more at large appeare, Yet the said Court and Jury found A Confirmation of the former Judgment, by findeing for the defendant, Cost of Court as I humbly Conceive Contrary to the oathes of many wittnesses, And thereby Accompting the said Smiths owne single oath though backt with neither testimony nor truth in any thing that is Essensuall to the Case to be of more vallydity then any of the other testimonies Contrary to his.

2<sup>ly</sup> That it might be well weighed and Considered that Smith by his owne Single oath hath sworne for his owne proffitt A great many pounds therefore ought not to be beleaved Because the word of God saith that out of the mouth of two wittnesses every thing ought for to be Confirmed, but Smiths Case is soe farr from being soe Confirmed, that them who were in his Company in that voyage, doe sweare the direct Contrary to most of his peticulers, And I hope Also it will be Considered how fallatious he is in his Accompts, and proceedings and how Daingerous A person he is to be Admitted, to take his oath or to be beleaved, when as I doe vpon good grounds beleave he will be proved guilty of Forgery, if Inquired into, by takeing vp goods of m<sup>r</sup> Samuell Shrimpton, by writeing A noate in the name of Olliver Dunkumbe after he was dead, And none of the said Dunkumbs act but Smiths after the said Dunkumbs death.

3<sup>ly</sup> Besides more then is proved in the Plantives Exceptions, there is proved Smiths 7<sup>th</sup> and 8<sup>th</sup> Article on the Debter side of his Accompt to be false by George Bucklands oath where he makes Debter, 5<sup>l</sup> 19<sup>s</sup> 0<sup>d</sup> in the two Articles, but paid no more to the said Buckland but 3<sup>l</sup> as proves his testimony where he saith he had of him but 2 Moose skinnns and 19<sup>s</sup> more was due to him, And the 2 Moose skinnns on the Creditt side of Smiths Accompt in his 8<sup>th</sup> Article are Vallued at 2<sup>l</sup> 1<sup>s</sup> soe that there is in these two Articles 2<sup>l</sup> 19<sup>s</sup> Charged falsely.

4<sup>ly</sup> In his Answer to my Exceptions against the 38<sup>l</sup> 6<sup>s</sup> 11<sup>d</sup> Charged in two Articles paid m<sup>r</sup> Shrimpton is that it was Justly due and Justly paid, which was true as to m<sup>r</sup> Shrimpton but very vniustly brought to the Accompt, being Smiths part of the Stock, in that voyage And because not soe owned nor Allowed in the former Judgment Appealed from, wherefore the plaintive Appealed to this Court for releife.

5<sup>ly</sup> To his 18<sup>th</sup> Article on the debter side he Charges 53<sup>l</sup> 6<sup>s</sup> 8<sup>d</sup> which the said Smith makes them debter for, (it was their owne goods being parte of the Stock left behinde with Olliver Dunkumbe, And the produse thereof delivered to the said Smith as is proved by the testimonies of John Perkins Richard Shoot and James Debeck, And therefore very vnreasonable for them to be made debtors for their owne goods to him, and therefore to be releived from such Iniustice, as this is humbly Conceived to be, I Appeal to this Court for releife.

6<sup>ly</sup> That my Exceptions with the proofs of them might be well weighed and Considered, which doe Containe much reason of my Appeale, which I desire this honored Court and Jury to Consider of them as if here Incerted which is omitted here to Avoyed tediousness, vpon which I doubt not but to finde releife from being

made debtor for my owne goods, and all other Iniuries Sustained by the said Judgment, Appealed from to this honored Court.

7<sup>ly</sup> In his 6<sup>t</sup> Article on the Creditt side of Smiths Accompt he mentions 3 firelocke Musketts not Vallued And the first Court and Jury that heard the Case did not Consider the same neither did the said Court nor Jury Appealed from as is humbly Conceived which is A damage to the Appellant.

8<sup>ly</sup> There is severall goods which the said Smith hath received and not given Creditt for as followeth, 3 ottar skinns one bilbo Rugg 2 Rowles of Tobacka one Copper Kettell, 2 Indian Hatchets And also other goods received he hath given Creditt Short of what he did receive, as followeth, in the last Articles of his Accompt on the Creditt side; where he gives Creditt but for one hundred waight of Shott and Lead, and he did receive two hundred weight, And but for A Quarter of A barrell of powder he received A third Parte of A barrell, And but for two gunns when he had three; All these Above particulers proved by the testimonyes of Richard Shoote and James Debeck, And he by Indirect means makes the whole Cargoe sent Eastward to be but 80<sup>l</sup> when it was Above 100<sup>l</sup> As proves the testimony of John Perkins And Alexander waugh two of the Company that went the voyage, And my Accompt

9<sup>ly</sup> Moreover tis witnessed by Edward Nailor, and Thaddeus Mack Cartar, two of his wittnesses, that they were paid 12 or 13<sup>l</sup> by Smith in Beavo<sup>r</sup> at 8<sup>s</sup> per pound as money, yet he gives Creditt for Beavor That was of the same Parcell but 4<sup>s</sup> 6<sup>d</sup> A pound, In the 10<sup>th</sup> Article of his Accompt on the Creditt side And maketh noe mention to whome he sould it, Least his falsehood should Appeare, And beside he sweareth to his Accompt as true, Never maketh mention of the whole he did receive, from John Perkins neither Creditt nor Debtor, As proves the two testimonyes of the said Nailor and Mak Carter.

10<sup>ly</sup> He Charges in his bill of Cost for 15 wittnesses 2 dayes in this Action when he had not Above Nine or tenn besides records out of the Court which I desire may be Considered

11<sup>th</sup> If I may Obteine the favour of this honored Court that since the whole Matter is so grosly errorious more or less Allmost in every Article, which may prove to tedious to the Jury, to finde out, that this honored Court would be pleased to Appoint An Auditt to Exammine the Accompts and proceeds of the whole Matter, I doe not doubt but it would prove the onely way to finde out the Justness of the Case, for the releife of your wronged Supplicant.

William Waldren

It does not appear that the appeal was allowed. To conclude this long series of cases, see below, p. 210.]

#### ANDERSON cont<sup>a</sup> COX

John Anderson, plaint. cont<sup>a</sup> Robert Cox Defend<sup>t</sup> in an accion of Trespass for that the saide Cox hath built a house partly upon the Land of the saide Anderson neere his house in Boston by Halsies Wharfe aboue the highway whereby hee hath taken away the saide Anderson's land about three foote at the upper corner of the saide Cox's house & about seven foote at the Lower Corner of the saide



house being to the Damage of the saide Anderson aboue one hundred pounds with other due Damages according to Attachm<sup>t</sup> Dat. Novemb<sup>r</sup> 18<sup>th</sup> 1672. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

SMITH cont<sup>a</sup> VEERING

John Smith plaintiffe cont<sup>a</sup> John Veering Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: 12<sup>th</sup> of Decemb<sup>r</sup> 1672. The plaint. withdrew his Accion.

SCOTT cont<sup>a</sup> CURTIS

Benjamin Scott, plaint: cont<sup>a</sup> Solomon Curtis Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: 22: 11: 72. . . . The plaint. withdrew his Accion.

SANDYS cont<sup>a</sup> LOCK

John Sandys as Surety for Ezekill Carveath plaint. upon a replevin cont<sup>a</sup> George Lock Defendant after the replevin Attachm<sup>t</sup> & Evidences in the case produced were read committed to the Jury and are on file with the Records of this Court. The Jury brought in their Verdict, they finde for the Defendant George Lock that there is due to him from Ezekill Carveath Twenty pounds nine Shillings & six pence mony & costs of Court [98] The plaintiffe appealed from the judgment of this Court to the next Court of Assistants & the saide John Sandys as principall in twenty pounds & Edward Lilly & James Meares as Sureties in ten pounds apeice acknowledged themselves in Court respectively bound to . . . prosecute his appeale . . .

[As actions of replevin are rare in the Colony, the documents of this case have been given in full, as found in S. F. 1165.]

S. F. 1165.1

To the Marshall of the County of Suffolk or his Deputy

You are hereby required in his Majesties Name to replevy a parcell of Fish of Ezekill Carveaths now attached by George Lock & Deliver the same to Ezekill Carveath provided hee give bond to the Value of eighty pounds, with Sufficient Surety or Sureties to prosecute his replevin to Effect at the next County Court to bee held at Boston & soe from Court to Court till the cause bee ended & to pay such costs & Dammages as the saide George Lock shall by law recover against him & soe make a true return hereof under yo<sup>r</sup> hand. Dated the second day of November 1672

By the Court Jonath. Negus

Endorsed. I haue replevied a parcell of dry Fish, that was attached by George Lock of Ezekill Carveaths this second of November & haue taken bond of him to the vallue of eighty pounds.

Per mee Richard Wayte Marshall

Wee Ezekill Carveath & John Sandys doe binde o<sup>r</sup> Selues heires & Executors unto Richard Wayte Marshall jointly & Severally in the Summe of eighty pounds in mony, vpon condicion the saide Carveath prosecute his replevin to effect at the next County Court to bee held at Boston & soe from Court to Court till the case bee ended: & that hee shall pay such Costs & Dammages as the saide Lock shall by law recover against him, & that wee will abide the order of the Court & not Depart without Licence as witness o<sup>r</sup> hands this Second of November 1672

Ezekill Carveath  
John Sandys

. . . true Coppie . . . Isaac Addington Cler  
[Endorsed:] Replevin No. 1:

S. F. 1165.4

Boston Septemb <sup>r</sup> y <sup>e</sup> 20 <sup>th</sup> 1671			Boston 1671		
M <sup>r</sup> Ezechiell Carveath is D <sup>r</sup>			P <sup>r</sup>	Contra is C <sup>r</sup>	
					li s d
	To yo <sup>r</sup> bill for ..	£:40:00:00	By .6. quantalls & 1		
9b <sup>r</sup> 7 <sup>th</sup>	To yo <sup>r</sup> bill for ..	£:03:00:00	quarter & 8 <sup>l</sup> of Fish at		
	To 6 <sup>l</sup> of Shot to		8 <sup>s</sup> per quen <sup>t</sup> . . . . .	£:02:10:06	
	John Moshear	£:00:03:00	By .2. hh <sup>ds</sup> for Ditto Screw-		
	To mony lent you		ing & packing . . . . .	£:00:10:00	
	at the Isle of		By .2. barrells of porke ..	£:06:00:00	
	Shoales . . . . .	£:00:02:00	By mony received . . . . .	£:08:00:00	
19	To mony paide		By .1½. a quantall of Fish		
	Cotten the		more . . . . .	£:00:04:00	
	Butcher . . . .	£:00:04:00	August: 3 <sup>d</sup> 1672 By mony		
August: 24 <sup>th</sup> 1672	To yo <sup>r</sup>		received . . . . .	£:03:00:00	
	bill . . . . .	£:05:00:00	8 <sup>th</sup> by mony received . . .	£:00:05:00	
		£:48:09:00			20:09:06
			Rest to ballance . . . . .		27:19:06
					48:09:00

Recieved of m<sup>r</sup> Ezechiell Carveath in part of paiment of this abovementioned bills & account, which amounts to Forty eight pounds & nine Shillings the Summe of twenty Seven pounds nineteen Shillings & six pence August y<sup>e</sup> 25<sup>th</sup> 1672 per Geo<sup>e</sup> Lock

John Sandys aged about 27 yeares & Thomas Overman aged about 39 yeares, testify, that upon discourse with m<sup>r</sup> Geo Locke about the aboue written Account & receipt to which his hand is Subscribed; in the latter end of November or the begining of December last past, hee the said lock did see & owne the abouewritten account & receipt, that hee did then shew the saide Tho: Overman & Jn<sup>o</sup> Sandys a Coppie of the Same.

Sworne to the truth of this their Evidence the 16. of January 1672 before mee Thomas Clarke Commission<sup>r</sup>

This is a true Coppie as attests Isaac Addington Cler

S. F. 1165.5

Boston the 20<sup>th</sup> of September 1671

I doe oblige my Selfe, my heires, executo<sup>rs</sup> administrato<sup>rs</sup> to pay unto George Lock or his Executo<sup>rs</sup> administrato<sup>rs</sup> the full & just Summe of Forty pounds currant Silver in New England within, at or before the last day of October next Ensuing as witness my hand the day & yeare aboue mentioned.

Ezechiell Carveath 1671

Signed &amp; Delivered in the presence of us John Keene, John Saunders

Boston the 7<sup>th</sup> of 9<sup>ber</sup> 1671

More then the abouesaide I will pay unto the saide George Lock within thirty dayes after this date three pounds of currant Silver in this Towne of Boston

Ezechiell Carveath 1671

John Keene hath made oath before mee, that hee see Ezekill Carveath Signe & Deliver the abovementioned Instrument as his act & deed & that John Saunders was then present & Subscribed as a witness to the Same. Sworne unto December 3. 1672

before Edw. Tyng Assist.

John Keene affirmed this in Court upon former Oath Jan<sup>y</sup> 29:1672

Attests Isaac Addington Cler

S. F. 1165.9

Boston in New England

This bill bindeth mee Ezekill Carveath my heires Executo<sup>rs</sup> administrato<sup>rs</sup> to pay or cause to bee paide unto George Lock his Executo<sup>rs</sup> or administrato<sup>rs</sup> more then my former obligacions the Summe of five pounds in Silver, within thirty dayes after the Date hereof in this Towne of Boston for confirmation of which I haue Subscribed my Name this 24<sup>th</sup> of August 1672

Ezehill Carveath 1672

. . . true Coppie . . . Isaac Addington Cler

S. F. 1165.6

9 ber: y<sup>e</sup> 8<sup>th</sup> 1672 Received of M<sup>r</sup> John Sandys Satisfaction for one Caske of Rumm for the acco<sup>t</sup> of M<sup>r</sup> Ezekill Carveath & containing about twenty eight gallons. 2<sup>li</sup> 15<sup>s</sup>

per mee Geo Lock

Witness Thomas Blighe  
Thomas TB Baker  
his marke

S. F. 1165.7

Thomas Hill aged Fifty yeares or thereabouts testifieth & saith, that about the latter end of the Summer, I asked m<sup>r</sup> Carveath for some mony, due to mee, hee answered mee that hee could not pay mee, before had sold his Fish, & a while after understanding that m<sup>r</sup> Lock had attached his Fish I then spake to m<sup>r</sup> Carveath & told him I understood that m<sup>r</sup> Lock had attached his Fish, his reply was

that hee had soe done, but that hee the saide Carveath did not owe him a penny although the Fish was attached for twenty pounds & farther saith not.

Sworne in Court Jan<sup>ry</sup> 29: 1672. Attests Isaac Addington Cler

S. F. 1165.8

The Deposition of Charles Hopkins saith, that about the beginning of November Last, hee heard Ezekill Carveath owne, that George Lock had three obligations of his & that hee did owe him about twenty two pounds as hee thought or thereabouts: this Deponant being about thirty Eight yeares old

Sworne unto Jan<sup>ry</sup> 18<sup>th</sup> 1672 before Edward Tyng Assist.

Affirmed upon his Oath in Court Jan<sup>ry</sup> 29: 1672 Attests Isaac Addington Cler.

S. F. 1165.11

Bethiah Harlock aged 32 yeares or thereabout testifieth that sometime Last Summer, speaking with m<sup>r</sup> Lock at m<sup>r</sup> Carveath's house, asked the saide Lock whether m<sup>r</sup> Carveath had not paide him that mony which hee borrowed, saide Lock answered that saide Carveath had paide him twenty odde pounds, then I asked if hee had Lent saide Carveath 40<sup>li</sup> hee answered noe, but that hee now came for, was the produce of the mony hee Lent him: and farther saith that shee hath heard the saide Lock often say to m<sup>r</sup> Carveath, that the mony hee came for, was for his Loseing his time here in Staying to the latter part of this. m<sup>r</sup> Carveath testifieth to the truth of it that hee did soe say.

Sworne in Court by Bethiah Harlock. Jan<sup>ry</sup> 29: 1672. Attests Jsaac Addington Cler. . . . True Coppie . . .

S. F. 1165.10

The Deposition of Robert Brinsden aged thirty three yeares or thereabouts testifieth & saith, that about the Eleventh day 9 ber Last, being in Company with m<sup>r</sup> Ezekill Carveath, heard him say that hee was forced to give m<sup>r</sup> George Lock a bill of Forty pounds for thirty pounds hee owed him, & sometime afterwards hee was forced to give him another bill of five pound & another bill of three pounds, all of them amounting to Forty eight pounds, but eighteen pounds of it was for interest of the thirty, & that hee was forced to give him those bills, or else m<sup>r</sup> Lock saide that hee would arrest him & Stop him of his Voiadge unto the Eastward & farther saith not.

Sworne in Court Jan<sup>ry</sup> 29: 1672. Attests Isaac Addington Cler. . . . true Coppie . . .

S. F. 1165.12

	George Locke his bill of Costs	<i>li s d</i>
Inp <sup>r</sup> mis	To attachment & Serving	00:01:06
	To Summonses	00:00:04
	To:4: witnesses attendance two dayes	00:12:00
	To my owne attendance 3 dayes	00:04:06
	To filing of papers	00:02:00
		<hr/>
	allowed J. A. C	£01:00:04
	. . . true Coppie . . . Isaac Addington Cler	



## S. F. 1165.3

Jn<sup>o</sup> Sandis as Surety for Ezek Curvat his Reasons of Appeal from the judgm<sup>t</sup> of the County Court held In Boston the 28<sup>th</sup> Janu<sup>ry</sup> 1672

First. For y<sup>t</sup> the now Plaintiff was Sued In an Action of Deb<sup>t</sup> for 48<sup>l</sup> 9<sup>s</sup> In mony dew by Bills and Acc<sup>t</sup> which tendeth to vncertaynety & was then Objected against by the now Plaintiff, & as humbly conseived not according to Law wherefore hee now appea[leth]

2<sup>d</sup> By Such vncertaine proofes any man by the Lent of two shillings (of bad Principles) may by chargeing the Same to Acc<sup>t</sup> & makeing bills Swere another man out of his Estate If Such proof may be good In Law where no artickle in the Acc<sup>t</sup> nor the bills be otherwise proued then by Single evidence, nither did the defendant produs ani book from whens this acc<sup>t</sup> wor drowde

3<sup>d</sup> Although Charls Hopkins sweares m<sup>r</sup> Curvatt owned thre bills and in all oweing by him about 22<sup>l</sup> yet harloks Oath doth contradict the truth as pretended [to] that Debt, for she Sayth that the mony m<sup>r</sup> Lock then came for was not Debt but Loss of time

4<sup>th</sup> M<sup>r</sup> Locks Receight vnder the Acc<sup>t</sup> bareing Date a day after y<sup>e</sup> Last artickle Is for twenty Seven pound nineteen shillings and Sixpence though expres<sup>t</sup> in part (other paym<sup>ts</sup> going before) makes the ballance of Acc<sup>t</sup> as it is before Insted, Twenty pounds nine shiling Six pence Is owned per m<sup>r</sup> Lock to be paid before as per his Acc<sup>t</sup> and att Several paym<sup>ts</sup> & this Receight of 27. 19. 6<sup>d</sup> is payd at once: 17 dayes after the Last of the other paym<sup>ts</sup> as per date which balancth y<sup>e</sup> Acc<sup>t</sup>

The truth of this appers in compareing Evidences with the dates that Lock owne the Later end of Novemb<sup>r</sup> that Acc<sup>t</sup> & the Receight as per Evidences of Tho Overman & In<sup>o</sup> Sandis. So that If ther did appere a Debt per m<sup>r</sup> Curvatts owneing it in y<sup>e</sup> beginning of Novemb<sup>r</sup> Now ther doth apper to be no Debt by m<sup>r</sup> Lockes owneing it in the Later end of Novemb<sup>r</sup> or beginning of Decemb<sup>r</sup> as per the form<sup>r</sup> Oathes. Yet was the Present Plaintiff cast wherefore he Appeales to this hon<sup>rd</sup> Court

John: Sandis

These Reasons were received from Jn<sup>o</sup> Sandys Feb<sup>ry</sup>: 27<sup>th</sup> 1672 about eight a clock in y<sup>e</sup> morning as Attests Isaac Addington Cler

It does not appear that the appeal was allowed.]

TYNG cont<sup>a</sup> LONG

Jonathan Tyng plaint: con<sup>a</sup> John Long Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: January 23<sup>d</sup> 167<sup>3</sup>. The plaint. withdrew his Accion

VSHER cont<sup>a</sup> HAMBLETON

John Vsher, attourny of Isaac Waldren, plaint. cont<sup>a</sup> William Hambleton Defend<sup>t</sup> in an accion of the case for refusing to pay five pounds & ten pence in mony due for ballance of an account with the saide Waldren being for physick &c: delivered to Allexand<sup>r</sup> Forbes then Servant to the saide William Hambleton & that contrary to his promiss & all other due Damages according to Attachm<sup>t</sup> Dat: Janu-

ary: 20<sup>th</sup> 1672. . . . The Jury . . . founde for the plaintiffe five pounds & ten pence Damage & cost of Court, being 26<sup>s</sup> 4<sup>d</sup>

Execucion issued Feb<sup>r</sup> 3<sup>d</sup> 1673 for 6<sup>li</sup> 7<sup>s</sup> 2<sup>d</sup>

WALDREN cont<sup>a</sup> SMITH

William Waldren, administrato<sup>r</sup> of or to the Estate of Oliver Duncomb deceased plaint: cont<sup>a</sup> Christopher Smith Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Novembr<sup>r</sup> 29<sup>th</sup> 1672. The plaint. in failor of process was nonsuited & thirty nine Shillings & two pence costs granted the Defend<sup>t</sup>

Execucion issued Feb<sup>ry</sup> 7<sup>th</sup> 1672 for 36<sup>s</sup> 2<sup>d</sup> m<sup>o</sup>

[ See above, pp. 135-9, 158, 163-4, 186, 193, 202-4.]

PADDY cont<sup>a</sup> WEEDEN

Thomas Paddy plaint. cont<sup>a</sup> Joseph Weeden Defend<sup>t</sup> in an accion of the case for not paying of five pounds one Shilling in Mony due by bill as may appeare & all due damages according to Attachm<sup>t</sup> Dat. January 20<sup>th</sup> 1672. . . . The Jury . . . founde for the plaint. five pounds & one Shilling in mony & costs of Court being twenty six Shillings & four pence.

Execucion issued Feb<sup>ry</sup> 8<sup>th</sup> 1672 for 6<sup>li</sup> 7<sup>s</sup> 4<sup>d</sup> m<sup>o</sup>

MINOTT cont<sup>a</sup> POPE

Sammuell Minott plaint. cont<sup>a</sup> John Pope Defendant in an accion of the case for withholding a Debt of Ninety four pounds due to the saide Minott by bill or bond under the saide popes hand & Seale, which Debt of ninety four pounds is due for that the saide Pope hath not [99] performed the Conditions therein mentioned & all other due Damages according to Attachm<sup>t</sup> Dat: January 6<sup>th</sup> 1672. . . . The Jury . . . founde for the plaint. ninety four pounds according to bond & costs of Court vpon the request of the Defend and the Magistrates chancered this bond to Fifteen pound twelue shillings & 3<sup>d</sup> with costs of Court. whis was thirty three Shillings eight pence.

Execucion issued Feb<sup>ry</sup> 14<sup>th</sup> 1672 for £: 17<sup>li</sup> 5<sup>s</sup> 11<sup>d</sup>

BUNDY cont<sup>a</sup> TOMLIN

John Bundy plaint: cont<sup>a</sup> John Tomlin Defend<sup>t</sup> in an accion of the case for withholding & not delivering possession unto him the saide John Bundy of that house & land wherein the saide John Tomlin now

dwelleth in & keeps possession of which of right belongeth unto the saide John Bundy lying & being in Boston abouesaide, which saide house & land was formerly the possession of Philip Alley & was given unto the saide John Bundy by the saide Phillip Alley in his life time in consideration of good affection & kindred the saide John Bundy being the Sister's son of Susanna the then wife of the saide Phillip Alley & soe acknowledged by them both & which saide house & land the saide John Bundy was to possess & enjoy from & jmmmediately after the decease of the saide Philip & Susanna Alley the Vncle & Aunt of the saide Bundy with other due damages according to Attachm<sup>t</sup> Dated. Novemb<sup>r</sup> 19<sup>th</sup> 1672. . . . The Jury . . . founde for the Defendant costs of Court.

PRATT cont<sup>a</sup> LORINGS

Timothy Pratt Attourney to Josiah Cooper administrato<sup>r</sup> to the Estate of Anthony Cooper & Francis his wife Deceased plaint: cont<sup>a</sup> Thomas Loring & John Loring administrato<sup>rs</sup> to the Estate of Thomas Loring deceased Defendants in an accion of the case for withholding a Debt or Estate of three hundred pounds or thereabouts in mony goods & provitions that hee the saide Thomas Loring deceased received into his hands of the Estate of the saide Anthony Cooper in or about the yeare 1635 & 1636 & all due damages & Emprouement & jnterest for the same according to Attachm<sup>t</sup> Dated 10<sup>th</sup> 11<sup>mo</sup> 1672. . . . The Jury . . . founde for the Defendants costs of Court.

CALLEY cont<sup>a</sup> WARREN

Joseph Calley plaint. cont<sup>a</sup> Humphry Warren Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Jan<sup>ry</sup> 14<sup>th</sup> 1672. The plaint. withdrew his accion.

[100] STODDARD &<sup>a</sup> cont<sup>a</sup> ROCK

M<sup>r</sup> Anthony Stoddard guardian to Thomas Robinson William Bartholmew guardian to James Robinson & Deacon William Parckes guardian to Joseph Robinson plaints cont<sup>a</sup> Joseph Rock Executo<sup>r</sup> to the last will & Testament of Thomas Robinson deceased Defend<sup>t</sup> in an accion of the case for not paying unto them the Summe of Seventy five pounds or thereabouts as by an Account given in to them the saide guardians by the saide Rock & made up by them divers months since may appeare due by ballance of the Account for three parts

thereof belonging to the said Thomas James & Joseph Robinson with all due damages according to Attachm<sup>t</sup> Dat: January 11<sup>th</sup> 1672. . . . The Jury . . . founde for the plaintiffe Seventy five pounds fifteen Shillings Damage & costs of Court, being 38<sup>s</sup>

Execucion issued Feb<sup>ry</sup> 24<sup>th</sup> 1672 for 77<sup>li</sup> 13<sup>s</sup> 0<sup>d</sup>

[See above, pp. 109, 155, 200, and below, 217, 241.]

#### CURTIS cont<sup>a</sup> SCOTT

Solomon Curtis plaint. cont<sup>a</sup> Benjamin Scott Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: January 21<sup>th</sup> 1672. The plaint. withdrew his Accion.

#### GOURDING cont<sup>a</sup> LENDALL

Abraham Gourding plaint: cont<sup>a</sup> Timothy Lendall Defendant according to Attachm<sup>t</sup> Dat. January: 22<sup>d</sup> 167 $\frac{3}{4}$ . The plaint. withdrew his accion.

#### COX cont<sup>a</sup> RANDALL

John Cox plaint. cont<sup>a</sup> Richard Randall Defendant in an accion of the case for refusing to obey the saide Coxes command to goe on board the said Catch & for assaulting him the saide Cox by throwing him down thereby breaking his Legg and disaining him of his Voiadge whereby the plaintiffe is greatly damnified & other due damages according to Attachm<sup>t</sup> Dat: 9<sup>th</sup> 11<sup>mo</sup> 1672. . . . The Jury . . . founde for the plaint. Sixteen pounds seven Shillings mony & costs of Court.

#### NEWCOMB cont<sup>a</sup> JONES

Andrew Newcomb plaint. cont<sup>a</sup> Robert Jones Defend<sup>t</sup> in an accion of the case for not paying the saide Newcomb for severall things hee delivered to Jn<sup>o</sup> Eldredge, the saide Jones promising to pay the saide Newcomb for what hee should betrust the saide Eldridge with, which things hee delivered the saide Eldridge amounts to five pounds or thereabouts to bee paide in mony or boards at mony price & due damages according to Attachm<sup>t</sup> Dat: 25. Decemb<sup>r</sup> 1672 [101]. . . . The Jury . . . founde for the plaint. five pounds & nine pence damage in Mony or boards at mony price & costs of Court. being twenty five Shillings & two pence.

Execucion issued March 5<sup>th</sup> 167 $\frac{3}{4}$  for £6:5:11.



LEVERETT cont<sup>a</sup> SYNDERLAND

Hudson Leverett attourny to Sammuell Mosely plaint. cont<sup>a</sup> John Synderland Defendant according to Attachm<sup>t</sup> Dat: January 22<sup>th</sup> 1672. The plaint. withdrew his accion

LEVERETT cont<sup>a</sup> WILLIAMS

Hudson Leverett, plaint cont<sup>a</sup> John Williams Defend<sup>t</sup> in an accion of the case for not paying of three pounds thirteen Shillings & six pence in mony due by bill & all due Dammages according to Attachm<sup>t</sup> Dat: January 3<sup>d</sup> 1672. . . . The Jury . . . founde for the plaint. three pounds thirteen Shillings & six pence in mony & costs of Court being thirty four Shillings.

Execucion issued Feb<sup>ry</sup> 14<sup>th</sup> 1672 for £5.7.6.m<sup>o</sup>.

SWEETE cont<sup>a</sup> PARMITER & PIKE

John Sweete, plaint. cont<sup>a</sup> Benjamin Parmiter & George Pike Defend<sup>ts</sup> in an accion of Debt of seven pounds due by bill & due Damages according to Attachm<sup>t</sup> Dat: January 10<sup>th</sup> 1672. . . . The Jury . . . founde for the plaint: Seven pounds Damage according to bill & costs of Court being twenty one shillings.

Execucion issued Feb<sup>ry</sup> 19<sup>th</sup> 1672 for £8:01:00.

CLARKE cont<sup>a</sup> ALDEN

Capt<sup>a</sup> Thomas Clarke, plaint. cont<sup>a</sup> John Alden Defendant in an accion of the case for not delivering six thousand of Marchantable pine boards unto Major<sup>r</sup> Generall Leverett, which the saide Alden brought from Yorke in the year 1664, & had order to deliver them to the Major<sup>r</sup> Generall & did not, which is to the Damage of the saide Clarke about twenty pounds & other due Damages according to Attachment Dat: 6: 10<sup>mo</sup> 1672. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

[The circumstances are related in the following depositions.

## S. F. 1471.12

The deposition of John Alden aged 44 yeares or thereabouts testifieth & Saith

That in the yeare Sixty four this deponent brought a parcell of [board]s for Cap<sup>t</sup> Thomas Clarke from Yorke, being 6000 which were to bee delivered at Cap<sup>t</sup> Thomas Clarkes wharfe, but this deponents boate being grounded at the s<sup>d</sup>

Clarke's wharfe was desired by the s<sup>d</sup> Clarke to deliver the s<sup>d</sup> boards to Major Generall Leverett, and desired this deponent to aske the Major Leverett where they should be delivered, the Major told this deponent they should be delivered in the Creeke above m<sup>r</sup> Hulls warehouse, this deponent desired the Major to provide a man to take account of them hee said his man should be ready to doe it, the same day this deponent brought his Boate into the Creeke and when hee was ready to deliver the boards, this deponent sent up his man to Major Leveretts for his man to come and take account of them; but this deponents man brought word that the man was busy and could not tend it, this deponent loath to loose another tide, which might a lost him a voyage, delivered the boards where the Major Leverett did appoint, and tooke account of them; being 6000 which this deponent entred in his booke at the same time as it may appeare by his booke and further saith not.

Sworn unto Decemb<sup>r</sup> 9<sup>th</sup> 1672 before Edward Tny Assist . . .

S. F. 1471.7

The deposition of Richard Dence aged 60 yeares or thereabouts testifieth and Saith

That about two or three months agoe Cap<sup>t</sup> Thomas Clarke sent mee to m<sup>r</sup> Alden to speake with him concerning Six thousand of boards which hee received for him in the yeare. 64. and to come to some agreement about them if not hee would put it into Court; m<sup>r</sup> Alden made mee this answer that I should tell Cap<sup>t</sup> Clarke that hee had delivered them to the Major Generall, I asking of him whither hee had taken a receipt for them. hee saide no, for it was my weakness to forget it; but however sed hee I have set it down in my Booke & I will Swear to my Booke & further this deponent Saith not. . . .

This case was reviewed in the July session, 1676. See below, pp. 706-7.]

#### LAWTON cont<sup>a</sup> BONNER

Henry Lawton, plaint. Cont<sup>a</sup> John Bonner Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat January. 23<sup>th</sup> 1672. The plaint. in failor of process was non Suited the Attachm<sup>t</sup> not being Served in time according to law — & costs granted the Defend<sup>t</sup> being: 25s. 6d.

Execucion issued March: 10: 1673 for 25<sup>s</sup> 6<sup>d</sup> [102]

[ Bonner made a fresh start at the July session. See below, pp. 291-2.]

#### [MIDDLECOTT v. BODKIN]

Richard Middlecutt plaint. cont<sup>a</sup> Dominick Bodkin Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Decemb<sup>r</sup> 21<sup>th</sup> 1672. The Accion was tried but the Defend<sup>t</sup> not being in y<sup>e</sup> Country judgment is not to be Entred till next Court. Vide p: 125.

MIDDLECOTT cont<sup>a</sup> BODKIN

Richard Middlecutt plaint. cont<sup>a</sup> Dominick Bodkin Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat 21<sup>d</sup> Decembr<sup>r</sup> 1672. The Accion was tried but the Defend<sup>t</sup> not being in the Country judgment is not to bee Entred till next Court. Vide p: 125.

PATTEN ags<sup>t</sup> DYER

Thomas Patten Attourney of John Patten of Severls in the parish of Crewkhern &<sup>a</sup> plaint: cont<sup>a</sup> Gyles Dyer Defend<sup>t</sup> The Court dismissed this accion till they might bee resolved of a question by the Generall Court.

[See below, p. 373.]

PATTEN ags<sup>t</sup> WOODY

Thomas Patten. Attourney of John Patten &<sup>a</sup> plaintiffe cont<sup>a</sup> Isaac Woody Defend<sup>t</sup> The Court dismissed this accon till they might be resolved of a question by the Generall Court.

[See below, p. 376.]

WISWALL &<sup>a</sup> cont<sup>a</sup> CHECKLY

Elder John Wiswall, Edward Hutchinson, & Richard Collicot or any one of them plaints. cont<sup>a</sup> Anthony Checkly Defendant according to Attachm<sup>t</sup> Dat: January 21<sup>th</sup> 1672. after a hearing of the case Capt<sup>a</sup> Hutchinson appearing as plaint. withdrew his accion & Costs were granted the Defendant. thirty seven Shillings & eight pence.

Execucion issued March 14<sup>th</sup> 167 $\frac{3}{4}$  for 37<sup>s</sup> 8<sup>d</sup> m<sup>o</sup>

EMMONS &<sup>a</sup> cont<sup>a</sup> DEDICOT

Obadiah Emmons & William. Smith plaints. cont<sup>a</sup> Henry Dedicot Defend<sup>t</sup> according to Attachment Dat. January 13<sup>th</sup> 167 $\frac{3}{4}$ . The plaints. withdrew theire accion

STOCKER cont<sup>a</sup> TAILOR

Samuell Stocker, plaint. cont<sup>a</sup> William Tailor Defend<sup>t</sup> in an accion of the case for deteining a Servant Negro boy named Cæsar who belongs to the saide Stocker which saide Negro boy was demanded by the saide Stocker of the abouenamed Tailor the sixt day of this instant but was refused to bee delivered & all due damages accord-

ing to Attachm<sup>t</sup> Dat. Novemb<sup>r</sup> 7<sup>th</sup> 1672. Thomas Norman appearing as Stocker's attourney Engaged in Court to respond the damage if cast before jssue was joined. . . . The Jury . . . founde for the Defendant costs of Court being Eleven Shillings & six pence.

Execucion jssued Feb<sup>ry</sup> 24 1672 for 11<sup>s</sup> 6<sup>d</sup>

#### PATTEN cont<sup>a</sup> FREAKE

Thomas Patten, Attourney of John Patten of Severls in the parishe of Crewkern in the Realme of England plaint. cont<sup>a</sup> John Freake Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: January 16<sup>th</sup> 1672. The Court dismissed this Accion till they might bee resolved of a question by the Generall Court [103].

[Consult Index for continuation.]

#### PARMITER cont<sup>a</sup> SCARLETT

John Parmiter, plaint. cont<sup>a</sup> John Scarlett Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. 22 11<sup>mo</sup> 1672. The plaint was non Suited upon failer of the Officer's return upon the Attachm<sup>t</sup> & costs granted the Defend<sup>t</sup> 7<sup>s</sup> 6<sup>d</sup>

Execucion issued 5<sup>d</sup> May: 1673.

#### TIMBERLAKE cont<sup>a</sup> NASH

William Timberlake, plaint. cont<sup>a</sup> Joshua Nash Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat Decemb<sup>r</sup> 10<sup>th</sup> 1672. The plaint. was non Suited upon nonappearance & costs granted the Defend<sup>t</sup> twenty Eight Shillings & six pence.

Execucion issued Feb<sup>ry</sup> 17<sup>th</sup> 1672.

#### HUDSON LEVERETT cont<sup>a</sup> PAINE

Hudson Leverett, plaint. cont<sup>a</sup> John Paine Defend<sup>t</sup> in an accion of the case for not paying of twenty pounds in mony which was Lent & delivered to the abouesaid John Paine in & upon the 25<sup>th</sup> of Novemb<sup>r</sup> which was in the yeare of o<sup>r</sup> lord 1663, as by a receipt under his hand may appeare & all due dammages according to Attachm<sup>t</sup> Dat: Jan<sup>ry</sup> 20<sup>th</sup> 1672. . . . The Jury . . . founde for the plaint. twenty nine pounds Dammage in mony & costs of Court being thirty Shillings & ten pence.

Execucion issued Feb<sup>ry</sup> 8<sup>th</sup> 1672 for £30:10:10.



LEVERETT cont<sup>a</sup> PAINE

Hudson Leverett, plaint. cont<sup>a</sup> John Paine Defend<sup>t</sup> in an accion of the case for not paying of one hundred forty & eight pounds of currant mony in New England due by bond as may appeare & all due Damages according to Attachm<sup>t</sup> Dat: January 3<sup>d</sup> 1672. . . . The Jury . . . founde for the plaint. one hundred forty eight pound according to bond & costs of Court. The Magistrates chancered this bond to one hundred & Sixteen pounds & costs of Court being thirty Shillings & ten pence

Execucion issued March 5<sup>th</sup> 167<sup>2</sup>/<sub>3</sub>.

SYNDERLAND cont<sup>a</sup> LEVERETT

John Synderland plaint. cont<sup>a</sup> Hudson Leverett Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Jan<sup>ry</sup> 21<sup>th</sup> 1672. The plaint: withdrew his accion.

STODDARD &<sup>a</sup> cont<sup>a</sup> ROCK

M<sup>r</sup> Anthony Stoddard guardian to Thomas Robinson William Bartholmew guardian to James Robinson and Deacon William Parckes guardian to Joseph Robinson plaints. cont<sup>a</sup> Joseph Rock administrat<sup>or</sup> to the Estate of m<sup>r</sup> John Coggan & m<sup>rs</sup> Martha Coggan Executrix to M<sup>r</sup> John Coggan Defend<sup>t</sup> in an accion of the case for not giving an account unto them or any one of them of the Estate which came into his hands as administrat<sup>r</sup> aforesaide which did belong unto Caleb Coggan Son & heire unto John Coggan both deceased & now three parts thereof by the will of the saide John Coggan the father & the death of the saide Caleb the Son. due to the aforesaide Thomas James & Joseph Robinson [104] although an account hath long since & often been demanded by the saide guardians, of the saide Rock & due damages according to Attachment Dat: 23<sup>th</sup> of August. 1672. . . . the Jury . . . founde for the plaints. that the Defend<sup>t</sup> deliver unto the plaints. within two dayes a true & faithfull account upon Oath of the Estate according to Attachm<sup>t</sup> & costs of Court or in default to pay unto the plaints One thousand pounds with costs of Court. being twenty nine shillings & ten pence.

Execucion issued 7<sup>br</sup> 12<sup>th</sup> 1674.

This Accion was continued by consent of partys till this Court.

[ See above, pp. 109, 155, 200, 211, and below, p. 241.]

## ROCK to BRADING

Joseph Rock personally appeared in Court Jan<sup>ry</sup>: 28<sup>th</sup> 1672 & acknowledged a judgment against himselfe & Estate to James Brading for one hundred pounds in mony for Security of a defective Mortgage. As Attests Isaac Addington Cler.

Execucion issued Jan<sup>ry</sup> 30<sup>th</sup> 1672.

## ROCK to THACHER

Joseph Rock personally appeared in Court Jan<sup>ry</sup>: 28<sup>th</sup> 1672 & acknowledged a judgm<sup>t</sup> against himselfe & Estate to Thomas Thacher senior for two hundred pounds in mony according to two bonds which are on file As Attests Isaac Addington Cler.

Execucion issued Jan<sup>ry</sup>: 30<sup>th</sup> 1672.

## ROCK to WINSLOW

Joseph Rock personally appeared in Court Jan<sup>ry</sup>. 28<sup>th</sup> 1672 & acknowledged a judgm<sup>t</sup> against himselfe & Estate to John Winslow for one hundred & fifty pounds in mony according to two bonds which are on file As Attests Isaac Addington Cler.

Execucion issued Jan<sup>ry</sup>. 30<sup>th</sup> 1672.

## ROCK to SHRIMPTON

Joseph Rock personally appeared in Court Jan<sup>ry</sup>. 28<sup>th</sup> 1672 & acknowledged a judgm<sup>t</sup> against himselfe & Estate to Sammuell Shrimpton for one hundred & six pounds in mony according to bond which is on file. As Attests Isaac Addington Cler.

Execucion issued Jan<sup>ry</sup>: 30<sup>th</sup> 1672.

## ROCK to RICHARDS

Joseph Rock personally appeared in Court Jan<sup>ry</sup>: 28<sup>th</sup> 1672. & acknowledged a judgment against himselfe & Estate to John Richards for fifty one pound thirteen Shillings & four pence in mony according to bond which is on file. As Attests Isaac Addington Cler.

Execucion issued Jan<sup>ry</sup>: 30<sup>th</sup> 1672.

## ROCK to CLARKE

Joseph Rock personally appeared in Court Jan<sup>ry</sup>: 28<sup>th</sup> 1672 & acknowledged a judgm<sup>t</sup> against himselfe & Estate to Martha Clarke

widow for Eighty pounds in mony according to bond which is on file.  
As Attests Isaac Addington Cler.

Execucion issued Jan<sup>ry</sup>. 30<sup>th</sup> 1672 [105].

#### RUGGLES his licence

The Towne of Roxberry being destitute of an Ordinary upon the motion of their Select men to this Court. The Court allows Sammuell Ruggles to keepe a house of publique Entertainment & to Sell wine beare & Sider by retaile till Aprill Court next hee giving in Security according to law. the saide Sammuell Ruggles in twenty pounds & Capt<sup>a</sup> Isaac Johnson in ten pounds acknowledged themselves respectively bound to the Treasuro<sup>r</sup> of the County of Suffolke on condition that the saide Ruggles shall observe the laws title Inkeepers with their addicions.

#### Court order about BUMPAS reversed

Vpon Veiwng & consideracon of the Articles of confederacion between the united Colonies. This Court reverseth the former order concerning Hannah Bumpas for imposing her on the Towne of Hingham.

[See above, p. 193. This case is of constitutional interest, because the court treats the Articles of the New England Confederation as the law of the Colony. The article referred to is the provision in Article 8, that no member of the Confederation receive "those that remove from one plantation to another without due certificate." Cf. the order for Hannah's return to Plymouth, below, p. 225.]

#### Order about SHEARN'S Childe

The Court orders that the Select men of Boston take care to make provicion for the youngest Childe of the late John Shearne Marrin<sup>r</sup> Deceased.

#### HOWARDS' sentence

Daniell Howard of Hingham & Deborah his now wife convict by their owne confession in Court of Fornicacion before Marriage; The Court Sentanceth the s<sup>d</sup> Daniell to bee whip't with fifteen Stripes or to pay three pound in mony fine to the County & fees of Court &

Sentence the saide Deborah to bee whip't with ten Stripes or to pay forty Shillings in Mony fine to the County & Fees of Court Standing Committed till the Sentence bee performed.

Order for a divicion for JOANE FISHER

In answer to the petition of Joane Fisher The Court orders Serjeant Thomas Thirston & Sammuell Fisher to set out the thirds of the lands lately the lands of Anthony Fisher lying in Wollomonupug to the saide Joane Fisher his Relict according to law.

TORRY sworne a Freeman

William Torrey of Weymouth took the oath of Freedom of this Colony Jan<sup>ry</sup> 28<sup>th</sup> 1672.

HOLEBROOKES Administracion

Administracion to the Estate of Abiezer Holebrooke deceased is granted to leif<sup>t</sup> John Holebrooke his Father in behalfe of the widow & Children if any hee bringing in an Inventory of s<sup>d</sup> Estate upon Oath & giving in Security to administer according to law.

PRATT sworne a Freeman

Joseph Pratt of Weymoth tooke the Oath of Freedom of this Colony. Jan<sup>ry</sup>. 28<sup>th</sup> 1672.

SWEETE, DRINCKER & GAYS Adm<sup>r</sup> to MARTIN

Administracion to the Estate of Elisabeth Martin Executrix to Rich<sup>d</sup> Martin Deceased is granted to John Sweete, Edward Drincker & Sammuell Gay on behalfe of the Children of saide Martin, they [106] bringing in an Inventory of saide Estate upon Oath & giving Security to Administer according to law.

Order for an Audit of M<sup>r</sup> MATHER'S Acco<sup>t</sup> of Administracion

M<sup>r</sup> Timothy Mather, presenting an acco<sup>t</sup> of his administracion to the Estate of Majo<sup>r</sup> Humphry Atherton & m<sup>r</sup> Jonathan Atherton proposing for a Committee to Audit the Account the Court granted it & the saide Atherton made choise of Capt<sup>a</sup> Roger Clap & Deacon William Parcke & m<sup>r</sup> Mather chose Capt<sup>a</sup> Hopenstill Foster to Audit the Acco<sup>t</sup> & to give their sence for a Divicion of the Estate which the Court approved of & to make their return with all possible Speed.



Gov<sup>r</sup> [BELLINGHAM'S] Executo<sup>rs</sup> liberty

This Court grants liberty to the late Governo<sup>rs</sup> Executo<sup>rs</sup> till the next Court to bring in an Inventory of that Estate.

[ See below, pp. 228-31, 237-8, 240-41, 248.]

## Freemen sworne

Obadiah Morse & Ephraim Wight both of Meadfeilde tooke the Oath of Freedom of this Colony.

## Meadfeilde sealer sworne

John Partridge of Meadfeilde, being chosen Sizer & Sealer of Weights & measures for their Towne was Sworne.

## SCOTT sentenced

Benjamin Scott of Brantery. convict of Endeavoring to draw away the affections of Prudence Gatleife without her parents' leave; The Court Sentanceth the s<sup>d</sup> Scot to pay five pounds in mony fine to the County & Fees of Court. In answer to the s<sup>d</sup> Scot's petition the Court respited his fine till they take further order.

## HOLLIDAY'S sentence

Anne Holliday presented for Selling Strong beere by retaile contrary to law, which she owned in Court The Court Sentanceth the saide Holliday to pay five pounds in mony fine to the County & fees of Court & to stand committed till shee give in bond for her good behavio<sup>r</sup> ten pounds her Selfe & five pounds apeice two Sureties. In answer to her petition the Court respited her fine till they take further order.

## ROBINSON'S sentence

James Robinson presented for rayling in the Streets using the name of God vainely &<sup>a</sup> which hee owned in Court, The Court Sentanceth the saide Robinson to bee admonished & to pay fees of Court & to give his owne bond of ten pounds for his good behaviour: accordingly the saide Robinson acknowledged himselfe bound in the Summe of ten pounds to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that hee shalbee of good behaviour especially that hee will not rayle or use the name of god vainly, untill the next Court of this County & that then hee shall appear. [107]

## STANTON'S sentence

Martha Stanton being bound over to this Court for her committing Fornication & having an illegitimate Childe, which she confessed in Court. The Court Sentanceth her to bee whipt with twenty Stripes & to pay Fees of Court. Standing committed till the Sentence bee performed.

## TROT'S sentence

Thomas Trott being accused by Martha Stanton to bee the father of her illegitimate Childe; which the saide Thomas Strongly denied & tendred his oath thereof, soe that hee not being legally convict soe to bee, & hee presenting an Attest of severall of his neighbourhood of his good conversation The Court Sentanceth the saide Trot to bee admonished & to pay Fees of Court.

## THO: RICKS'S guardian

Thomas Ricks appeared in Court & made choise of Thomas Fitch for his Guardian which hee accepted & the Court allowed of.

## ABIGAIL WOOD'S guardian

Abigail Wood Daughter of Nicholas Wood of Bogglestowe neare meadfeild, made choise of Stephen Williams for her Guardian which hee accepted & the Court allowed of

## BETHIAH WOOD'S guardian

Thomas Bass is appointed by the Court to bee Guardian to Bethiah Wood Daughter as aforesaide till shee come of age to choose for her selfe which hee accepted.

## ELEAZER WOOD'S guardian

John Thirston is appointed by the Court to bee Guardian to Eleazer Wood Son as aforesaide till hee come of age to choose for himselfe which hee accepted of.

## THO: GRANT'S bond for the good behaviour

Thomas Grant of Dorchester presented for Entertaining Edward Paison's Servant on lord's dayes & other dayes & for pernicious lying. The Court Sentanceth hime to give in bond for his good behaviour of five pounds himselfe & fifty shillings apeice two Sureties accordingly

the saide Thomas Grant as principall in five pounds & Thomas Davenport senio<sup>r</sup> & Thomas Dewer as Sureties in fifty Shillings apeice acknowledged themselves respectively bound . . .

Capt<sup>a</sup> SCARLETT & M<sup>r</sup> CLARKE & KELLOND fined

Capt<sup>a</sup> Sammuell Scarlett m<sup>r</sup> Christopher Clarke & Tho: Kellond not attending to serve on the Jury of Trialls this Court according to Summons The Court fined them twenty shillings apeice in mony to the County. upon the application made to the Court by m<sup>r</sup> Kellond & m<sup>r</sup> Clarke the Court remitted their fines.

Divicion of NICHOLAS GEORGES Estate

The Court orders for the Settlement of the Estate of the late Nicholas George deceased, that Abigail George his relict shall haue the house & land during her life & after her decease to bee devided between the [108] Children of the saide George the eldest Son to have a double porcion, but in case she marry againe & the children arrive at age before the mother dye, then the mother to enjoy onely the thirds & the rest to bee devided among the Children which the Relations of the Children & the widow were well Satisfied with.

JOHN VEERING's bond for Appearance

John Veering as principall in 100<sup>li</sup> & Daniell Turill jun<sup>r</sup> & Phillip Squire as Sureties in 50<sup>li</sup> apeice acknowledged themselves in Court respectively bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide John Veering shall appeare at this Court & abide the Sentence of the Court & shall not depart without licence.

Commission<sup>rs</sup> Authorized to Receive the Claimes to

BERNARD'S Estate

Capt<sup>a</sup> William Davis & Capt<sup>a</sup> Edward Hutchinson are appointed Commission<sup>rs</sup> to receive the claimes of the Credito<sup>rs</sup> to the Estate of the late m<sup>r</sup> Sammuell Bernard deceased they being to give in their claimes between this & the next Court of this County the Commission<sup>rs</sup> to appoint time & place.

CURTIS's sentence

Solomon Curtis convict of Swearing The Court Sentanceth him to pay ten Shillings in mony fine to the County and Fees of Court.

## BROWNES sentence

James Browne convict of vilifying & reproaching m<sup>r</sup> Anthony Stoddard in bad language The Court Sentanceth him to give an acknowledgment under his hand to m<sup>r</sup> Stoddard's Satisfaction or to pay five pounds in mony fine to the County; this to bee done within a week following & to pay charges of Witnesses & Fees of Court. M<sup>r</sup> Stoddard acknowledged in Court hee had rec<sup>d</sup> Satisfaction.

## LAKE sworn a Freeman

Capt<sup>a</sup> Thomas Lake took the oath of Freedom of this Colony.

## HARRIS's sentence

John Harris, convict of swearing severall oaths & making pernicious Lyes & giveing Scurrilous language The Court Sentanceth him to bee whip't with twenty Stripes or to pay five pounds in mony fine to the County & Fees of Court & charges of Witnesses Standing committed till the Sentence bee performed.

## Order to PERRY about VEAL's Estate

The Court orders that Seth Perry Constable who was ordered by the Court to take an Inventory & make appraisall of the Estate of the late Katharine Veale deceased, do make Sale of some of the goods for the defraying those necessary Charges have been expended upon her & them & to make return thereof.

## [Petition of ISAAC ADDINGTON]

In answer to the Peticion of Isaac Addington this Court orders that the saide Addington continue to bee Clarke of the county Court of Suffolke till hee receive order to the [109] contrary from the Court.

[ Evidently Freegrace Bendall had returned from his voyage to Madeira and was looking for his job again. See above, p. 154*n*.]

## HENRY MASON's discharge from training

Henry Mason, on certificate from Capt<sup>a</sup> Tho: Clarke is discharged from ordinary Trainings.



## WAINWRIGHT and LEADER'S bonds for the good behaviour

Jacob Wainwright & Thomas Leader Servants to William English, convict of Setting up libells at Henry Thompson's dore & abusing of him therein & other bad actions & carriages towards him & the neighborhood The Court Sentanceth them to give in bond for their good behaviour with two Sureties apeice in five pounds apeice & to pay Fees of Court & charges of Witnesses standing committed & accordingly M<sup>r</sup> Nicholas Page & John Vsher as Sureties for Jacob Wainwright & Edward Goodwin & Thomas Bill as Sureties for Thomas Leader acknowledged themselves respectively bound in the Summe of five pounds apeice to the Treasuro<sup>r</sup> of the County of Suffolke on condition that the saide Jacob Wainwright & Thomas Leader shalbee of good behaviour towards all men especially towards Henry Thompson & his family m<sup>r</sup> James Everell & his Family till the next Court of this County & that then they shall appeare.

## Order about HANNAH BUMPAS

Whereas Information is given to this Court by Ensigne Thaxter Nathaniell Baker & Thomas Andrews of Hingham, that Hannah Bumpas who is an inhabitant of Plimouth Colony is imposed upon their Towne by warrant from some of that Colony which warrant nor Coppie of it is left with them; which is contrary to the Articles of confederation. The Court orders the Clarke of this Court to grant a warrant to the Constable of Hingham to return the saide Bumpas to the place of her birth & parantage & for his soe doing this shalbee his warrant this to be done as often as the saide Bumpas is returned to Hingham.

[See above, p. 219.]

## Divicion of MARSHALL'S Estate

For the Settlement of the Estate of the late John Marshall of Boston deceased. The Court orders the Widow all the Movables & Debts for ever (she paying the Debts & funerall charges) & one third of the house & land during her life & the whole during the minority of the Eldest son, for the bringing up the Children & when the eldest son comes of age hee is to haue a double portion of the rest according

to valluation at that time the remaind<sup>r</sup> to bee devided among the other Children equally as they come of age & in case of death the Deceased's porcion to be equally devided amongst the rest.

#### Order for divicion of Major ATHERTON's Estate

The Court orders Capt<sup>a</sup> Roger Clap Capt<sup>a</sup> Hopestill Foster & Deacon William Parcke, who were appointed a Committee to audit the accounts of the Estate of the [110] late major Humphry Atherton are appointed & hereby Empoured to make a divicion of that Estate according to form<sup>r</sup> order of this Court at the time when administracion was granted amongst the parties concerned & to make return what they do therein to the next Court of this County.

#### WAYTE'S Returne

Marshall Richard Wayte made return to this Court by his Son that hee had received 107<sup>11</sup> of the Estate of the late Nicholas Stephens Deceased as hee was administrato<sup>r</sup>

#### Roxbury Comission<sup>rs</sup>

The Court appoints Deacon William Parcke m<sup>r</sup> John Parpoint & m<sup>r</sup> Thomas Weld to bee Commission<sup>rs</sup> for the Towne of Roxbury for the yeare Ensuing.

#### PARMIT<sup>rs</sup> complaint refer'd

The Court refers the complaint of John Parmiter against Seth Perry, Constable to the Determinacion of the Magistrats of Boston.

#### Dedham Comission<sup>rs</sup>

The Court appoints Ensigne Daniell Fisher Serj<sup>t</sup> William Avery & Serj<sup>t</sup> Richard Ellis Commission<sup>rs</sup> for the Towne of Dedham for the yeare Ensuing.

#### PEG'S Presentm<sup>t</sup>

Robert Pegg presented for selling strong beere contrary to law made default in non appearance according to Summons.

#### SPENCER'S Presentm<sup>t</sup>

Robert Spencer presented for his wives selling strong beere contrary to law made default in non appearance according to Summons.

GROSS'S Presentm<sup>t</sup>

Mathew Gross presented for selling strong beere contrary to law, the presentment not being fully proved; but theire being great complaints of the disorders of that house The Court Sentanceth the saide Gross to the good behaviour & accordingly the saide Mathew Gross in ten pounds & John Wats in ten pounds as Surety acknowledged themselves in Court jointly & severally bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Mathew Gross shalbee of good behaviour especially that hee shall not sell strong beere till the next Court of this County & that then hee shall appeare.

PENIMAN'S Presentm<sup>t</sup>

James Penniman presented for selling Strong drinke contrary to law The Presentment not being proved fell.

COY'S Presentm<sup>t</sup>

Matthew Coy presented for selling strong drinke contrary to law made default in non appearance according to Summons.

KENT'S Presentm<sup>t</sup>

William Kentt presented for selling wine & strong beere contrary to law the presentm<sup>t</sup> not being proved fell.

WINSOR'S Presentm<sup>t</sup>

Robert Winsor presented for selling strong beere contrary to law. The presentm<sup>t</sup> not being proved fell.

COSEN'S Presentm<sup>t</sup>

Isaac Cosens presented for Selling strong beere contrary to law. The presentm<sup>t</sup> not being proved fell [111].

HUTCHINSON'S Presentm<sup>t</sup>

Capt<sup>a</sup> Edward Hutchinson as agent for his Vncle Hutchinson in England presented for the insufficiency of a part of the wharfe against John Roads's; Capt<sup>a</sup> Hutchinson made answer it did not belong to him neither was hee Agent as aforesaide. The Court orders the Selectmen of Boston to looke after it.

## County presented

The County presented for Deficiency in two Bridges the one leading to Dedham the other to Muddy River. The Court orders the County Treasuro<sup>r</sup> to looke after theirre repaire

## Roxbury Presented

The Towne of Roxbury presented for deficiency in the Earth worke of one of the aforesaide Bridges. one of theirre Selectmen Viz<sup>t</sup> Griffin Crafts made answer it was mended.

## Dorchester Presented

The Towne of Dorchester presented for want of a Schoolmaster according to law; Goodman Sumner one of the Selectmen made answer they had one.

## Brantery Presented

The Towne of Brantery presented for the insufficiency of the Bridge over Manatocot River, Edmund Quinsey one of the Select men made answer it was mended.

WOODWARD'S Presentm<sup>t</sup>

Peter Woodward junio<sup>r</sup> of Dedham presented for selling of Sider to Indians contrary to law. The Court respits this presentment till the next Court of this County & order the saide Woodward then to attend.

WHARTON'S Presentm<sup>t</sup>

M<sup>r</sup> Richard Wharton presented by the Grandjury for reviling & reproaching of m<sup>r</sup> James Allen Teacher of the first Church of Christ in Boston, in Saying hee added a line or clause to the Governo<sup>rs</sup> will after hee had Signed & Sealed it, which is proved by Witnesses to bee slanderous & reproachfull & contrary to law title Heresy (Sect. 7.)<sup>1</sup>

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<sup>1</sup> "7. And every person or persons whatsoever, that shall revile the Office or person of Magistrates or Ministers, as is usual with the Quakers, such person or persons shall be severely whipt, or pay the sum of *five pounds*." The General Laws and Liberties, 1672, p. 61.



m<sup>r</sup> Wharton being called desired the benefit of a Jury which was granted and after the presentment & Evidences in the case produced were read comitted to the Jury & remaine on file with the Records of this Court The Jury brought in their Verdict they finde m<sup>r</sup> Richard Wharton, by declaring & manifesting his apprehensions, to bee guilty of reproaching m<sup>r</sup> James Allen. The Court Sentanceth the saide m<sup>r</sup> Wharton to give in bond for the good behaviour; of one hundred pounds himselfe, & fifty pounds apeice two Sureties, till the thirteenth of March next & then to appeare, (& the Court declared that then they expect hee should prosecute his Charge exhibited in Court against the late Governo<sup>rs</sup> Executo<sup>rs</sup>) & to pay the Charges of Witnesses & Fees of Court m<sup>r</sup> Wharton declared in Court that hee submitted to the Sentence & accordingly the saide m<sup>r</sup> Richard Wharton as principle in one hundred pounds & m<sup>r</sup> Tho: Brattle & m<sup>r</sup> Nicholas Page as Sureties in fifty pounds apeice acknowledged themselves respectively bound . . . [112]

[Governor Bellingham, who had presided over the October session of this Court, died on December 7, 1672, at the age of eighty. The will was probated on December 19, and early in the new year began a contest over it which became New England's "Jarndyce v. Jarndyce," lasting 114 years, and terminated by the Supreme Judicial Court of the Commonwealth of Massachusetts in 1787, after the entire estate had been consumed in litigation (our Publications, xii. 113-16). Although Bellingham had been a lawyer and municipal recorder before he emigrated to New England, and although he had been the chief figure in drafting the Laws and Liberties of the Colony in 1648, he yet "turned strangely," says Hubbard, "although upon very pious considerations, as some have judged, out of the ordinary road" of the law "in the making of his last will and testament."

Richard Wharton, a prominent "merchant, attorney-at-law, promoter, landed proprietor, and political leader," was "by nature masterful, energetic, perservereing, and ambitious," and by his enemies considered "unscrupulous, headstrong, and selfish" (Viola F. Barnes, in our Publications, xxvi. 238). In this case he was the attorney of Samuel Bellingham, the Governor's only son, a member of the first graduating class of Harvard (1642) who returned shortly after to England, took an M.D. at Leyden, and lived in England the rest of his life. The contest was largely over the Governor's estate of Winnisimmet, which comprised nearly the whole of the present city of Chelsea. Samuel Bellingham,

apparently, was incensed at his father's leaving him only a life interest in this valuable piece of property, the whole of which was to be placed in the hands of trustees, for various pious and charitable uses. A copy of the Governor's will, from S. F. 1225.4, follows:

Among many other undeserved Favours of God towards me this is none of the least, that for so long a time I have Lived under the Special Governm<sup>t</sup> of Christ in his Church, not without some Soul of Satisfaction thro<sup>t</sup> the Gracious presence of Christ who hath walked in the Midst of these Churches w<sup>ch</sup> I Judge have been Constituted according to his mind, That I may Testify the Engagem<sup>t</sup> of my heart to the Lord being now of perfect Memory & understanding I do Dispose of my Temporal Estate wherew<sup>th</sup> the Lord hath blessed me by this my Last Will as followeth.

Viz<sup>t</sup> I do Give to my Beloved Wife the Rent of that Farm Nicholas Rice liveth in to be paid her duly after my decease, as also my Dwelling house with the yard & Field adjoining during her Natural Life

To my only Son & his Daughter during their Natural Lives I Give the Farm Liev<sup>t</sup> John Smith is Tenant in, the other two Farms wherein John Belcher and Goodman Townsend are Tenants I do give the Rents of them towards the Relief of Four Daughters of Col William Goodrick so long as they shall have Urgent need, to be paid to their Certain Attorney here & by him sent to the Eldest Sister to dispose it for their use, & to pay my Debts, & other Legacys

Also I do freely & Willingly Dispose and give (after mine & my Wifes decease) the Farm she hath During her Life (and after the Decease of my son & his Daughter) my whole Estate in Winnissimet to be an Annual Encouragem<sup>t</sup> to some Godly Ministers and preachers and such as may be such who shall be my Trustees judged Faithfull to those principles in Church Discipline, which are owned and practiced in the first Church of Christ in Boston of which I am a Member, A Main one whereof is That all Ecclesiastical Jurisdiction is Committed by Christ to each particular organical Church from which there is no Appeal Visible Sainthood being the Matter, & Express Covenanting the Form of the Church. For the Regular Disposing this Estate according to my true intention I do request Constitute and appoint M<sup>r</sup> John Oxenbridge M<sup>r</sup> James Allen Teaching Officers to the first Church of Christ in Boston M<sup>r</sup> John Russell of Hadley, & M<sup>r</sup> Anthony Stoddard Shopkeeper in Boston to be Feoffees in Trust and Exe<sup>rs</sup> to this my Last Will, and their heirs & Exe<sup>rs</sup> forever, and in Case of Death or any other removal whereby either of them are Un capable of Acting, (being so judged by the rest) power is hereby given to y<sup>e</sup> rest to Elect one or more in his or their Stead who shall have the same power, & that three of these Consenting shall make any Valid Act, I doe Desire them to observe these Instructions following

1 My Will is that in Convenient time a Ministers house & Meeting house be built at Winnissimet when Sufficient be received out of the Rents

2 That Lotts for Dwellers and Inhabitants be given out & Conveniency of Land to the Ministers House.

3 That four or Six more or less Young students be brought up for the Ministry as the Estate will bear

4 That something be allowed yearly to any Godly Congregational Minister who shall be willing to Settle in that place

5 That my Trustees take care of my Beloved Wife to give her Counsil as she need, and help her as far as they can in the quiet Enjoym<sup>t</sup> of her Estate & receiving of her Rent

6 That the Trustees meet twice a year at least as often else as they can or is need, and that they be allowed what is Meet for each Meeting

7 That they allow Annually as they shall think fitt to a Godly Congregational Minister qualified as above for his further Support

8 That every quarter of the year one Sermon be preached to Instruct the people in Boston in Church Discipline according to the Word of God and such Competent allowance be given to each of them as my Trustees shall judge fit or Sufficient. I Declare this to be my Last Will and Testament and hereby Null any other.

Richard Bellingham & a Seal

Nov. 28, 1672

See also below, pp. 232, 237, 240-41, 248.]

#### VEERING Present'd

John Veering presented for beeing drunck & abusing his wife in bad language calling her whore &<sup>a</sup> reproaching m<sup>r</sup> Allen & Church members in saying m<sup>r</sup> Allen was a black hypocritical Rogue, of all which hee was convict in Court. The Court Sentanceth him to bee whip't with thirty Stripes severely laide on & to stand in the open market place in Boston, exalted upon a Stoole for an houres time on a thursday after Lecture; with a paper fastned to his breast, with this inscription in a lardge character **A Prophane & Wicked Slanderer & impious Reviler of a minister of the Gosple & Church-members;** & to pay charges of witnesses & Fees of Court standing committed &<sup>a</sup> Vpon the petition of the saide Veering & humble acknowledgment made in open Court The Court reverseth this Sentence & Sentance the saide Veering to pay ten pounds in mony fine to the County & to give in bond for the good behaviour of twenty pounds himselfe & ten pounds apeice two Sureties & to pay the Charge of Witnesses & Fees of Court standing committed &<sup>a</sup> & accordingly the saide John Veering principle in twenty pounds & Daniell Turill sen<sup>r</sup> & John Conny Sureties in ten pounds apeice acknowledged themselves respectively bound . . .

#### MATTOCK's Present'd

Samuell Mattock presented for Idleness & neglecting his Family of which hee was convict in Court. The Court Sentanceth him to bee sent to the house of correction for an idle person & to pay Fees of Court.

CHANDLER Present<sup>d</sup>

John Chandler presented for disorder in his house at unseasonable times of night & suffering people to bee singing & fidling at midnight of which hee was convict in Court. The Court Sentanceth him to pay Forty shillings in Mony fine to the County & to pay Charges of Witnesses & Fees of Court & to give bond for his good behaviour of five pounds & fifty shillings apeice two Sureties accordingly the saide John Chandler principle in five pounds & Thomas Halley & William Thorne Sureties in fifty shillings apeice acknowledged themselves in Court respectively bound . . . [113]

JACKMAN Present<sup>d</sup>

Henry Jackman presented for lying in saying hee was a single man & attempting marriage with severall, who hath since confessed hee had a wife in England & for living from under family Goverment & for carrying a firebrand in his hand flaming at Midnight by a hay stack & barne of all which hee was convict in Court partly by his owne confession. The Court Sentanceth him to bee whip't with twenty Stripes & to pay the charge of witnesses & fees of Court & to return to England to his wife by the next Ship on the penalty of twenty pounds according to law Standing committed &<sup>a</sup> & s<sup>d</sup> Jackman when hee should haue received his punishment hee comming druncke into Court. the Court added five Stripes more to his whipping

## WHARTON's Charge

M<sup>r</sup> Richard Wharton in open Court Feby 3<sup>d</sup> 1672 Charged m<sup>r</sup> John Oxenbridge m<sup>r</sup> James Allen & m<sup>r</sup> Anthony Stoddard for falsifying theire trust to & violating the late Gov<sup>rs</sup> will.

## WHARTON's commitment

M<sup>r</sup> Richard Wharton for contempt in open Court was committed to prison.

## Rock's Negro Sentanced

M<sup>r</sup> Rock's Negroe maide Bess presented for committing Fornication which she owned in Court & that she had an illegitimate Childe The Court Sentanceth her to bee whip't with twenty stripes & to pay Fees of Court.



## JASPER Indian Sentanced

Jasper m<sup>r</sup> Warren's Indian convict by his own confession in Court of committing Fornication The Court Sentanceth him to bee whip't with fifteen Stripes or to pay Forty shillings in mony fine to the County & Fees of Court.

## JOAN Negro's Sentence

Joan m<sup>r</sup> Warren's Negro convict by her own confession in Court of committing Fornication with Jasper Indian & that she had an illegitimate Childe The Court Sentances her to bee whip't with Fifteen Stripes or to pay Forty Shillings in Mony fine to the County & Fees of Court

## MERCY VEERINGS Sentence

Mercy Veering convict of uncivill carriage with Sammuell Smith, & bad language & carriages towards her husband John Veering. The Court Sentanceth her to bee whip't with twenty Stripes & to pay Fees of Court standing committed while the Sentence bee performed. vpon her petition the Court respites the Execucion of her Sentence till after her next delivery of Childe.

## SAMM: SMITH's Sentence

Samuell Smith, convict of uncivill carriages to & too great familiarity with Mercy the wife of John Veering The Court Sentanceth him to bee whip't with thirty Stripes. Vpon the humble petition of the saide Smith the Court reversed this judgment and Sentence him to pay ten pounds in mony fine to the County & Fees of Court & after his discharge to depart the Towne of Boston. [114]

Ord<sup>r</sup> to the Treasuro<sup>r</sup> concern. JACOB

In Answer to the petition of John Jacob of Hingham The Court orders the County Treasuro<sup>r</sup> to pay saide Jacob forty Shillings in Mony, hee engaging in Court if hee could meete with the person to endeavo<sup>r</sup> to recov<sup>r</sup> it of him & if hee should soe doe to reimburst the Treasuro<sup>r</sup>

## MORSE's Sentence

Francis Morse convict by his own confession for Stealing hay out of Capt<sup>a</sup> William Davis his barn in the night The Court Sentanceth

him to pay to the saide Capt<sup>a</sup> Davis Fifteen Shillings in mony being halfe that threefold restitution that the law requires & to pay Fees of Court & charges of prosecution standing committed till the Sentence bee performed.

#### DINELY'S Sentence

Fathergon Dinely convict by his own confession in Court of Stealing hay out of Capt<sup>a</sup> William Davis his barn in the night & carrying it to his own stable The Court Sentanceth him to pay to the saide Capt<sup>a</sup> Davis fifteen shillings in mony being halfe that threefold restitution that the law requires & to pay fees of Court & charges of prosecution & to give in bond for the good behaviour of. 10<sup>li</sup> himselfe & 5<sup>li</sup> apeice two Sureties standing committed &<sup>a</sup> accordingly the saide Fathergon Dinely as principall in ten pounds & Peter Bennett & James Meares as Sureties in five pounds apeice acknowledged themselves respectively bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Dinely shalbee of good behavio<sup>r</sup> till the next Court of this County & shall then appeare.

[For an explanation of Dinely's action, see above, pp. 167-73. For the outcome, see below, p. 246.]

#### GRAVEN<sup>rs</sup> Sentence

John Graven<sup>r</sup> of Roxberry & Esther his wife presented by the Grandjury for committing Fornication before marriage, which they confessed in Court. The Court Sentanceth the saide John Graven<sup>r</sup> to bee whip't with fifteen Stripes or to pay three pounds in mony fine to the County & Fees of Court. The Court Sentanceth the saide Esther Graven<sup>r</sup> to bee whip't with ten stripes or to pay forty Shillings in mony fine to the Court & fees of Court standing committed &<sup>a</sup>

#### JARRETT'S Sentence

James Jarrett, convict of pernicious lying & stealing severall goods from leif<sup>t</sup> Richard Cooke The Court Sentanceth him to bee whip't with twenty Stripes & to pay leif<sup>t</sup>: Richard Cooke five pounds damage in mony & charges of witnesses & fees of Court standing committed till the Sentence bee performed.

## COUCH'S Sentence

D<sup>r</sup> Robert Couch bound over to this Court for making Verses tending to the reproach of the late Gov<sup>r</sup> Richard Bellingham Esq<sup>r</sup> & of the Ministers: The Court Sentanceth him to give in bond for the good behavio<sup>r</sup> [115] ten pounds himselfe & five pounds apeice two Sureties: Vpon his request the Court accepted of his own bond and the s<sup>d</sup> Robert Couch acknowledged himselfe bound in the Summe of ten pounds. . . .

## THORN'S Sentence

William Thorn convict by his own confession in Court of giving strong liquo<sup>rs</sup> to Henry Jackman a prison<sup>r</sup> who was Sentanced to bee whip't, when hee was comming from the prison to receive his punishment soe that the saide Jackman came drunck into Court. The Court Sentanceth the saide Thorn to pay ten shillings in mony fine to the County & Fees of Court standing committed till the Sentence bee performed.

The Court Adjourned till the 13<sup>th</sup> of March next.

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March 13<sup>th</sup> 1672.

The Court met according to Adjournment.

Present

JOHN LEVERETT ESQ <sup>r</sup> DEPT <sup>t</sup> GOV <sup>r</sup>	EDW: TYNG ESQ <sup>r</sup>	} Assts
	WM STOUGHTON ESQ <sup>r</sup>	

KEYN *alias* OAKE'S Sentence

Phillip Keyn alias Oake being committed for breaking open the house of Roger Rose & picking the lock of a box & taking out mony thence; which hee confessed in Court & judged it to bee thirty five shillings, The Court Sentances him to bee branded in the Forehead with the letter B according to law & to pay to Roger Rose five pounds five shillings in mony being that three fold restitution that the law requires & to pay Fees of Court standing committed till the Sentence bee performed.

## TUDER'S Sentence

John Tudor, convict by his own confession in Court of committing Fornication with Elizabeth Holland The Court Sentanceth him to bee whip't with thirty stripes & to pay Fees of Court standing committed till the Sentence bee performed & after his discharge forthwith to depart the Town of Boston.

## HOLLAND'S Sentence

Elizabeth Holland, convict by her own confession in Court of committing Fornicacion with John Tudor, by whome she had an illegitimate childe: The Court Sentanceth her to bee whip't with twenty Stripes or to pay ten pounds in mony fine to the County & Fees of Court standing committed &<sup>a</sup>

## BEDWELL'S Sentence

Mary the wife of Samuell Bedwell convict by her own confession in Court of abusing the wife of Godfry Armitage in her own house, by reproachfull language & blows. The Court Sentanceth her to bee whip't with ten Stripes or to pay Forty shillings in mony fine to the County & Fees of Court: standing committed &<sup>a</sup> [116]

## BEN: BRIDGHAM'S guardian

Benjamin Bridgham made choise of his brother Joseph Bridgham for his guardian which hee accepted & the Court allowed of.

## SAM: &amp; JAMES BRIDGHAM'S guardian

The Court appoints Jonathan Bridgham as guardian to his two younger brothers Sammuell & James Bridgham till they come of yeares to choose for themselves which hee accepted of.

Dedham Commission<sup>rs</sup> Sworne

Ensigne Daniell Fisher & Serjeant Richard Ellis were sworn Commission<sup>rs</sup> for the Town of Dedham for the yeare Ensuing.

## Dedham Clarke

Ensigne Daniell Fisher is approved of by the Court for Clarke of the writts for the Town of Dedham.



## ALDUS'S Licence

John Aldus of Dedham, is allowed of till Aprill Court next to keepe a house of publique Entertainment in Dedham & to sell wine & beere by retaile & the saide John Aldus as principle in twenty pounds & leif<sup>t</sup> Richard Cooke & Joshua Fisher as Sureties in ten pounds apeice acknowledged themselves respectively bound . . .

KNIGHT present<sup>d</sup>

Julian Knight, being presented by the Grandjury for keeping disorderly company in her house at unseasonable times of the night, the presentm<sup>t</sup> not being proved fell.

LEWIS present<sup>d</sup>

John Lewis senio<sup>r</sup> presented by the Grandjury for selling strong drinck contrary to law. The presentm<sup>t</sup> not being proved fell.

## Order About BLACKLOCK

Vpon the request of Thomas Norman attourney to Thomas Smith & his affirmation that Sarah Blacklock now a prisn<sup>r</sup> is Servant to William Kent by agreement The Court orders that the saide Kent may haue his saide Servant out of prison & may transport her to any plantation within his Majesties Dominions.

[Sarah Blacklock's case may be followed on pp. 128, 149, 164-5, 185, 189.]

Court Order for W<sup>m</sup> READ's releasement

The Court orders that William Read junio<sup>r</sup> appearing before the Clarke of the Court & owning his petition given in to this Court & giving in Sufficient Security to indemnify the Court from any claimes that may bee made by any person from whom hee stole & was Sentanced to make restitution to, & giving in Security for the good behavio<sup>r</sup> forty pound's bond his Father & himselfe & twenty pounds apeice two Sureties till the next Court of this County & then to appeare if in the Country; hee is discharged from his imprisonment [117]

Court's Injunction on M<sup>r</sup> WHARTON

M<sup>r</sup> Richard Wharton, being called to prosecute his charge exhibited this Court against m<sup>r</sup> John Oxenbridge m<sup>r</sup> James Allen & m<sup>r</sup>

Anthony Stoddard (for falsyfying their trust to & violating the late Governo<sup>rs</sup> will) according to the Court's declaring (their now Expectation thereof) at their former Session when they Sentenced him to the good behavior M<sup>r</sup> Wharton refused to prosecute without the Court would authorize him in behalfe of the Country & gave this as one reason thereof hee was loathe to put in his Evidences because hee must bee at the charge of taking them out again: vpon which the Court enjoined him as followeth: M<sup>r</sup> Richard Wharton the Court having formerly tried you with onely expressing themselves as expecting yo<sup>r</sup> prosecution of yo<sup>r</sup> charge exhibited this Court against m<sup>r</sup> John Oxenbridge m<sup>r</sup> James Allen & m<sup>r</sup> Anthony Stoddard & you still persisting in yo<sup>r</sup> declinings of it; The Court doe therefore require yo<sup>r</sup> prosecution of the saide Charge at Aprill Court next & declare that yo<sup>r</sup> bonds for the good behavior stand good till that time. M<sup>r</sup> Wharton appealed to the next Court of Assistants & gave bond to prosecute accordingly: Richard Wharton you as principle in five hundred pounds & James Whetcomb & Arthur Mason as Sureties in two hundred & fifty pounds apeice acknowledge yo<sup>r</sup>selves respectively bound . . .

All which the persons abouenamed did oblige themselves to in Court March 13<sup>th</sup> 1673. Attests Isaac Addington Cler. [118]

[ See pp. 228-31, 232 above, and consult Index.]

March 26<sup>th</sup> 1673.

The Commission<sup>rs</sup> for the Severall Towns in Suffolke being then assembled at Boston, for the opening & perusal of the Votes for Election of County Treasuro<sup>r</sup> declared that Edward Tyng Esq<sup>r</sup> was chosen Treasuro<sup>r</sup> of the County of Suffolke for the yeare Ensuing As Attests Isaac Addington Cler.

Boston March. 29<sup>th</sup> 1673.

#### WEEDEN to SAVAGE

Joseph Weeden, personally appearing before John Leverett Esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup> Edward Tyng Esq<sup>r</sup> Assist. & the Clarke of the County Court of Suffolke acknowledged a judgm<sup>t</sup> against himselfe & Estate for thirty six Shillings in mony to Ephraim Savage. as Attests Isaac Addington Cler.

Execucion issued March 31<sup>th</sup> 1673.

COOKE to FAIREWEATH<sup>r</sup>

Robert Cooke of Boston Hornbreaker personally appeared before John Leverett Esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup> and Edward Tyng Esq<sup>r</sup> Assist: Aprill. 24<sup>th</sup> 1673 & acknowledged a judgment against himselfe & Estate to John Faireweather of saide Boston Marrin<sup>r</sup> for twenty two pounds two Shillings New England mony it being according to bill. this was thus done as Attests Isaac Addington Cler.

## COTTEN to NORDEN

John Cotten of Concord personally appeared before John Leverett Esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup> & Edward Tyng Esq<sup>r</sup> Assist & acknowledged a judgment against himselfe & Estate to Sammuell Norden of Boston for thirteen pounds twelue Shillings & eight pence in good Merchantable Shoes & goods at price currant this done Aprill 28<sup>th</sup> 1673. as Attests Isaac Addington Cler.

Execucion Issued y<sup>e</sup> 6. Agust 1673 [119]

At a County Court held at Boston Aprill 29<sup>th</sup> 1673

Present

JOHN LEVERETT Esq <sup>r</sup> Dep <sup>t</sup> Gov <sup>r</sup>	EDW: TING Esq <sup>r</sup>	} Assits
	W <sup>m</sup> STOUGHTON Esq <sup>r</sup>	

Grandjury the same with the form<sup>r</sup> Court.

Jury of Tryalls Sworn

m <sup>r</sup> James Nash sen <sup>r</sup>	John Stebbens	Henry Neale
John Poole	John Newell	Hump <sup>r</sup> Johnson
Ephraim Savage	Benj <sup>a</sup> Beal	James Vailes
Seth. Perry	Thom: Bird	Peter Woodward jun <sup>r</sup>

[VSHER v. TIMBERLAK]

John Vsher Plaint. cont<sup>a</sup> William Timberlak Defend<sup>t</sup> in an accion of the case for refusing to give him Security for his comming out of prison according to his promiss being put in there upon an Execucion of Sixty eight pounds recovered against him at a County Court held in Boston the 29<sup>th</sup> October 1672 & all other due damages according to Attachm<sup>t</sup> Dat. January: 28<sup>th</sup> 1672: . . . The Jury . . . founde for the Defendant costs of Court.

Execucion Issued y<sup>e</sup> 4th of June 1673 for Seaven shillings eight pence 7<sup>s</sup> 8<sup>d</sup>

[BELLINGHAM Executors v. SMITH]

M<sup>r</sup> John Oxenbridge m<sup>r</sup> James Allen & m<sup>r</sup> Anthony Stoddard Executors to the last will of Richard Bellingham Esq<sup>r</sup> plaintiffes cont<sup>a</sup> Leiftenant John Smith of Winnisimmet Defend<sup>t</sup> in an action of the case for not paying unto them the Summe of one hundred pounds for Rent due for the Farme & Ferry at Winnisimmet for the two yeares last past according to an agreement made the thirtieth of January 1664. & all due damages according to Attachment Dat. Aprill 11<sup>th</sup> 1673. . . . The Jury . . . founde for the plaintiffs one hundred pound's & costs of Court. The Defend<sup>t</sup> appealed from the Judgment of this Court at the next Court of Assistants and gaue bond to prosecute: The saide Leif<sup>t</sup> John Smith as principle in two hundred pounds



m<sup>r</sup> Richard Wharton & m<sup>r</sup> John Osborne as Sureties in one hundred pounds apeice acknowledged themselves respectively bound . . . that the saide John Smith should prosecute his appeale . . .

[For an introduction to Bellingham will case, see note to Wharton's Presentment, above, p. 228. The result of the appeal of this case to the Court of Assistants appears in the following record (S. F. 1220):

At a Court of Assistants held at Boston 2<sup>d</sup> September. 1673.

L<sup>t</sup> John Smith Pl<sup>t</sup> against M<sup>r</sup> John Oxenbridge, M<sup>r</sup> James Allen and M<sup>r</sup> Anthony Stoddard Executors to the Last will of Richard Bellingham Esq<sup>r</sup> In an Action of Appeal from the Judgment of the last County Court in Boston . . . The Jury brought in . . . a Special Verdict. If he that is an Executor to a part of an Estate disposed of by Will be a legal Executor to the whole of that Estate tho never disposed of by Will then the Jury find for the Defendants Confirmation of the former Judgment & Cost of Courts, otherwise for the p<sup>t</sup> Reversion of the former Judgment & Cost of Courts. The Magistrates find for the Defend<sup>ts</sup> Confirmation of the former Judgment & Costs of Courts fifty Seven Shillings . . .]

#### STODDARD &<sup>a</sup> cont<sup>a</sup> ROCK

M<sup>r</sup> Anthony Stoddard guardian to Tho<sup>s</sup> Robinson W<sup>m</sup> Bartholmew guardian to James Robinson & Deacon W<sup>m</sup> Parckes guardian to Joseph Robinson plaint<sup>s</sup> cont<sup>a</sup> Joseph Rock administrato<sup>r</sup> to the Estate of m<sup>r</sup> John Coggan & m<sup>rs</sup> Martha Coggan Executrix to m<sup>r</sup> John Coggan Defend<sup>t</sup> in an action of the case for not paying unto them one thousand pounds according to a verdict of the Jury in January Court last in case hee gaue not the aforesaide guardians a true & faithfull account which they then Sued for the which hee hath not done nor paide the ballance which by his account hee makes due thoug far short of what is coming from him to them with all due damages according to Attachm<sup>t</sup> Dated the 17<sup>th</sup> of March 167 $\frac{2}{3}$ . . . The jury . . . founde for the Defendant costs of Court. being ten shillings.

Execucion issued 7<sup>br</sup> 7: 1674. [120]

[ See above, pp. 109, 155, 200, 211-12, 217, and below, p. 243.]

#### PARMITER cont<sup>a</sup> OVERMAN

John Parmiter, plaint: cont<sup>a</sup> Thomas Overman Defend<sup>t</sup> in an accion of the case for not responding the plaintiffe his Damage hee hath Sustained by pulling down part of a wharfe standing on the plaintiffes land which was done by saide Overman or some other belonging to

him to the great damage of the plaintiffe & all other due damages according to Attachm<sup>t</sup> Dat. Aprill. 19<sup>th</sup> 1673. . . . The Jury . . . founde for the Defendant costs of Court.

#### WOODCOCK cont<sup>a</sup> SHOARE

William Woodcock plaintiffe cont<sup>a</sup> Sampson Shoare Defend<sup>t</sup> upon an appeale from a judgment granted against him by the Dep<sup>t</sup> Gov<sup>r</sup> for twenty five shillings damage & costs of Suite twenty Shillings & ten pence: at a Court held by him in Boston January 23<sup>th</sup> 1672 according to law for one Magistrate. . . . The Jury . . . founde for the Defendant confirmation of the former judgment & costs of Courts.

#### STANTON cont<sup>a</sup> TROTT

Robert Stanton, in behalfe of his Daughter Martha Stanton plaint. cont<sup>a</sup> Thomas Trott jun<sup>r</sup> Defend<sup>t</sup> in an action of the case for withholding pay for to bring up her childe which hee the saide Trott is by law the reputed Father of, with due damage according to Attachm<sup>t</sup> Dat: March the last. 1673. . . . The Jury . . . founde for the plaintiffe that Thomas Trott jun<sup>r</sup> is the reputed Father of the Childe by law born of Martha Stanton & Leaue it to the honoured Court to order maintenance for the Childe as the law directs & costs of Court. The Court orders that the saide Thomas Trott pay to Robert Stanton in behalfe of his Daughter Martha Stanton ten pounds in mony towards the maintenance of her Childe & costs of Court. being 35 sh<sup>1</sup>

Execucion issued May: 22<sup>th</sup> 1673

#### ADDINGTON cont<sup>a</sup> TIMBERLAK

Isaac Addington, Attourney of Joseph Williams of Providence in the Colony of Rode Island & Providence plantations in New England, plaint. cont<sup>a</sup> William Timberlak Defend<sup>t</sup> in an action of the case for withholding a Debt of seven pounds ten Shillings in mony due by bill bearing date the 18<sup>th</sup> day of September 1672 with all due dammages according to Attachment. Dat. March 20<sup>th</sup> 167<sup>2</sup>/<sub>3</sub>. . . . The Jury . . . founde for the plaintiffe Seven pounds Fifteen Shillings mony & costs of Court. being Fifteen Shillings. [121]

BURNHAM cont<sup>a</sup> HIRST

Arthur Burnham, plaint. cont<sup>a</sup> William Hirst Defend<sup>t</sup> in an action of Debt for the nonpayment of seven pounds two Shillings sterling due by bill & all other due dammages according to Attachm<sup>t</sup> Dat. Aprill: 22<sup>d</sup> 1673. . . . The Jury . . . founde for the plaintiffe Seven pounds two Shillings currant mony of New England & costs of Court.

BURNHAM cont<sup>a</sup> HIRST

Arthur Burnham, plaint. cont<sup>a</sup> William Hirst Defend<sup>t</sup> in an accion of Debt for the nonpayment of four pounds Sterling due by bill & all due dammages according to Attachm<sup>t</sup> Dat. Aprill 22<sup>d</sup> 1673. . . . The Jury . . . founde for the plaintiffe four pounds currant mony of New England & costs of Court.

STARKEY cont<sup>a</sup> TIMBERLAK

John Starkey plaint. cont<sup>a</sup> William Timberlake Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill. 24<sup>th</sup> 1673. The plaintiffe withdrew his Accion.

ROCK cont<sup>a</sup> ROBINSON

Joseph Rock, Executo<sup>r</sup> of Thomas Robinson late of Boston deceased plaintiffe cont<sup>a</sup> the goods or Estate of Thomas Robinson James Robinson & Joseph Robinson in the hands of Anthony Stoddard guardian to Thomas Robinson William Bartholmew guardian to James Robinson & W<sup>m</sup> Parcks guardian to Joseph Robinson or in either of theire hands Defend<sup>ts</sup> in an action of Reveiw of an accion of the case commenced & prosecuted against the saide Rocke Executo<sup>r</sup> as aforesaide at a County Court held at Boston in January last by the abouenamed three guardians to Thomas James & Joseph Robinson jointly & all other due dammages according to Attachm<sup>t</sup> Dat. February: 22<sup>th</sup> 1672. . . . The jury . . . founde for the plaintiffe Seventy five pounds Fifteen Shillings dammage to bee paide in the like specie which the pu<sup>r</sup>sent Defend<sup>ts</sup> received by Vertue of the former Courts judgment January last & costs of Court being: 25<sup>s</sup>

[See above, p. 241, and Rock v. Clarke, below, pp. 369-72.]

HUNTER cont<sup>a</sup> COWELL

Mary Hunter, plaint. cont<sup>a</sup> Joseph Cowell Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill: 21<sup>th</sup> 1673. The plaint. withdrew her accion.

SHEFEILDE cont<sup>a</sup> COBHAM

Edmund Shefeilde plaint. cont<sup>a</sup> Josiah Cobham Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill 24<sup>th</sup> 1673. The plaint. withdrew his accion.

[122] COOLY cont<sup>a</sup> WAY

Henry Cooly plaint. cont<sup>a</sup> Richard Way Defend<sup>t</sup> in an accion of the case for injusly & illegally trespassing by incroaching wharfing & building on some part of the Flatts in Boston which are a propriety belonging to the saide Cooly soe that the plaintiffe is damnified to or about Forty pounds with all other due dammages according to Attachm<sup>t</sup> Dat. 22<sup>th</sup> of Aprill: 1673. . . . The Jury . . . founde for the plaintiffe the ground in question which is about four foote in breadth & costs of Court 25<sup>s</sup> 2<sup>d</sup>

Execucion Issued y<sup>e</sup> 18<sup>th</sup> 4m<sup>o</sup> 1673 for 25<sup>s</sup> & 2<sup>d</sup> & 4 foot of ground in bredth &<sup>c</sup>

FRENCH cont<sup>a</sup> TYNG

Phillip French, Attourney of Sammuell Shute Benjamin Shute & Thomas Firman of London plaint. cont<sup>a</sup> Jonathan Tyng Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: March: 24<sup>th</sup> 167<sup>3</sup>/<sub>4</sub>. The plaint: withdrew his Accion.

ROCK cont<sup>a</sup> NORDEN

Joseph Rock, plaintiffe cont<sup>a</sup> Sammuell Norden Defend<sup>t</sup> according to Attachment Dated Aprill 22<sup>th</sup> 1673. The Court declared a Non Suite upon disappearance of plaint. & Defend<sup>t</sup>

LILLY cont<sup>a</sup> PROSSER

Edward Lilly, plaint. cont<sup>a</sup> Roger Prosser Defendant in an accion of Debt to the vallue of thirty six pounds in mony due by bill to saide Lilly on the accoump<sup>t</sup> of m<sup>r</sup> Bernard Trott & all due dammages according to Attachm<sup>t</sup> Date March: 27<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint twenty four pounds in mony & costs of Court.

SHRIMPTON cont<sup>a</sup> HUDSON

Jonathan Shrimpton, plaint. cont<sup>a</sup> Cap<sup>t</sup> William Hudson Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill 23<sup>d</sup> 1673. The Court declared a Non-suite upon disappearance of plaint. & Defend<sup>t</sup>



GIBBON cont<sup>a</sup> SHARP

William Gibbon plaint. cont<sup>a</sup> Richard Sharp Defend<sup>t</sup> in an accion of the case for not paying & delivering the saide Gibbon the two hogsheads of Seuger in due time, which the saide Sharp shewed him & consented the saide Gibbons marking them for payment of ten pounds eighteen Shillings in mony for goods Sold & delivered the saide Sharp at mony price & the saide Sharp having not delivered the saide Seuger nor paide in mony the saide Debt of ten pounds Eighteen Shillings [123] nor will hee deliver the saide Gibbon his goods back againe nor performe any of them which is much to the saide Gibbons dammage for not having the same Seuger delivered in time that hee might haue had the Freight for it, nor now can hee haue the same Seuger that was marked, but other Seugers not soe good contrary to Agreement, therefore, the saide Gibbon craues that hee may haue the ten pounds Eighteen Shillings in mony or the saide goods againe & all due damages according to Attachm<sup>t</sup> Dat: Aprill: 21<sup>th</sup> 1673. . . . The Jury . . . founde for the plaintiffe two of the best hogsheads of Seug<sup>r</sup> under Attachm<sup>t</sup> & twenty one shillings in mony & costs of Court being 25 sh<sup>1</sup> 6<sup>d</sup>

Execucion issued May: 10<sup>th</sup> 1673

HIRST cont<sup>a</sup> BURNHAM

William Hirst, plaint. cont<sup>a</sup> Arthur Burnham Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill: 24<sup>th</sup> 1673. The plaint. was nonSuted upon non appearance.

ATHERTON cont<sup>a</sup> MATHER

Jonathan Atherton, plaint. cont<sup>a</sup> Timothy Mather Defend<sup>t</sup> according to Attachment Dat. Aprill: 14. 1673. The plaint. in failer of process was Non Suted & Costs granted y<sup>e</sup> Defend<sup>t</sup> 4<sup>s</sup>

Execucion: issued 7. 6m<sup>o</sup> 73.

LIDGETT cont<sup>a</sup> SAMPSON

Peter Lidgett, Attourney unto Richard Pikeford plaint. cont<sup>a</sup> the goods Debts or Estate of Francis Sampson in the hands of John Freake Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill 16<sup>th</sup> 1673. The plaint. in Failer of process was Non Suted.

PARMITER cont<sup>a</sup> SCARLETT

John Parmiter, plaint. cont<sup>a</sup> John Scarlett Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill 19<sup>th</sup> 1673. The plaintiffe withdrew his Accion. & costs granted the Defend<sup>t</sup> nine Shillings.

Execucion issued May: 5<sup>d</sup> 1673.

HEATON cont<sup>a</sup> OLIVER

Jabez Heaton, plaint. cont<sup>a</sup> Capt<sup>a</sup> James Oliver Defend<sup>t</sup> in an accion of Debt of six pounds twelue shillings due by bill & due dammages according to Attachm<sup>t</sup> Dat. Aprill 22<sup>th</sup> 1673. The Defend<sup>t</sup> made a default by non appearance & upon the desire of the plaint. The Court declared his bond Forfited. Nevertheless the Accion proceeded to tryall & . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

WARREN cont<sup>a</sup> CALLEY

Humphry Warren, plaint. cont<sup>a</sup> Joseph Calley Defend<sup>t</sup> in an accion of the case for the Forfiture of a bond of Arbitration of one hundred pounds for not fulfilling an Award of Fourteen pounds in mony given in by Anthony Checkly & William Dyer, Arbitrato<sup>rs</sup> chosen [124] by the saide Warren & the saide Calley & all due dammages according to Attachm<sup>t</sup> Dat. Aprill 24<sup>th</sup> 1673. . . . The Jury . . . found for the plaint. the forfiture of the bond & costs of Court. The Magistrates chancered this bond to the summe in the award & costs of Court.

DINELY cont<sup>a</sup> STEENWICK

Fathergon Dinely adm<sup>r</sup> to the Estate of John Dinely deceased plaint. cont<sup>a</sup> the goods or Estate of Cornelius Steenwick in the hands of Cap<sup>t</sup> William Davis Defend<sup>t</sup> in an action of the case for illegall seazing apprizing and making division of a house & land that the aforesaide John Dinely was never legally possessed of noe division ever having been made between the aforesaide John and Fathergon Dinely in the saide land but after the decease of John Dinely, Fathergon Dinely his brother as adminst<sup>r</sup> to the deceased his Estate was legally possessed of the saide house and land & hath fully satisfied for them as may appeare by saide Fathergon his account given to & accepted by the County Court with all due dammages according to Attachm<sup>t</sup> Dat. Aprill: 23<sup>d</sup> 1673. . . . The Jury . . . founde for the Defendant costs of Court.

[For the background of this case, see above, pp. 167-73. The courts having found against the Dinely estate on several occasions for the debt to Cornelis Steenwyck of New York, and an execution having been levied on a part of his brother's estate, which was now in the hands of Steenwyck's attorney Davis, Fathergon Dinely tried a new plea, to the effect that the property seized for the debt did not belong to the late John Dinely, but to the estate of his father, which had never been divided between the two brothers. Following this judgment, Dinely presented an action for review, for which see below, pp. 292-93.]

#### ATKINSON cont<sup>a</sup> WILLIAMS

Theodor Atkinson sen<sup>r</sup> plaint. cont<sup>a</sup> Cap<sup>t</sup> John Williams Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat Jan<sup>ry</sup> 28<sup>th</sup> 1672. The plaintiffe upon non appearance was non Suited.

[See above, pp. 53-9, and above, p. 372.]

#### BRATTLE cont<sup>a</sup> CROSBY

Thomas Brattle plaint. cont<sup>a</sup> Joseph Crosby Defend<sup>t</sup> in an accion of Debt of seven pounds nine Shillings in mony due by bill & due damages according to Attachm<sup>t</sup> Dat. Aprill 23<sup>th</sup> 1673. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

#### WAYTE cont<sup>a</sup> OLIVER

Richard Wayte plaint. cont<sup>a</sup> Capt. James Oliver Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill. 23<sup>th</sup> 1673 The plaint. withdrew his Accion

#### MIDDLECUTT cont<sup>a</sup> BODKIN

Richard Middlecutt plaint. cont<sup>a</sup> Dominick Bodkin Defend<sup>t</sup> in an accion of the case for that the saide Bodkin hath not paid to the said Middlecutt the Summe of thirty six pounds in mony or thereabouts due for the produce of one eighth part of the Ship Marmadon belonging to the saide Middlecutt, which saide Summe the saide Bodkin received for the use of the saide Middlecutt about Sixteen months since & due damages according to Attachm<sup>t</sup> Dat. December: 21<sup>th</sup> 1672. [125] This accion was tried at January Court last (but Judgm<sup>t</sup> not entred till this Court because the Defend<sup>t</sup> was not in y<sup>e</sup> Country) . . . The Jury . . . founde for the plaintiffe thirty six pounds dammage in mony & costs of Court.

MIDDLECUTT cont<sup>a</sup> BODKIN

Richard Middlecutt plain<sup>t</sup> cont<sup>a</sup> Dominick Bodkin Defend<sup>t</sup> in an accion of the case for a just & true account & the produce thereof of one third part of a Cargo of goods that cost the whole Cargo about three hundred twenty one pounds nineteen Shillings in Ireland & there Shipped aboard the Johns Adventure Edward Winslow Master by Andrew Blake & Peter Kirwan & consigned to William Bickham Dominick Bodkin & Richard Middlecutt or theire assignes in Boston in New England as per bill of Lading & otherwise may appeare, which saide Cargoe was here received by the saide Bodkin for himselfe & in behalfe of the rest concerned as appeares by his receipt on the back-side of the aforesaide bill of lading reference thereunto being had & other due damages according to Attachm<sup>t</sup> Dat: Decemb<sup>r</sup> 21<sup>th</sup> 1672. This Accion was tried at January Court last (but the Defendant not being in the Country judgment was not entred till this Court). . . . The Jury . . . founde for the plaintiffe that the Defend<sup>t</sup> deliver unto the plaintiffe within one month a just and true Account & produce thereof of one third part of a Cargo of goods inserted in the Attachm<sup>t</sup> & costs of Court or in Default to pay the plaintiffe one hundred & twenty pounds with costs of Court.

JONES Fined 10<sup>s</sup>

Thomas Jones of Hull not appearing according to Summons to serve on the Jury of Tryalls at this Court. The Court fined him ten Shillings in mony to the County. [126]

## [BELLINGHAM executors v. SMITH]

M<sup>r</sup> John Oxenbridge m<sup>r</sup> James Allen & m<sup>r</sup> Anthony Stoddard Executors to the late Richard Bellingham Esq<sup>r</sup> his will, having an action depending in Court against Leif<sup>t</sup> John Smith of Winnisimmett: The Dep<sup>t</sup> Gov<sup>r</sup> declared in open Court his dissent from m<sup>r</sup> Whartons being an Attourney to the saide Smith (who did in open Court declare that m<sup>r</sup> Wharton was the cause of the action) the person viz<sup>t</sup> m<sup>r</sup> Wharton being one under bonds of good behaviour.

[See above, pp. 228–31, 237–8, 240–41.]



M<sup>rs</sup> MANNINGS Liberty

M<sup>rs</sup> Anne Manning had liberty granted her till the next Court of this County to bring in an Inventory of the Estate of her late Father m<sup>r</sup> Richard Parker deceased.

## Freemen Sworn

Edward West & Jonathan Morse both of Medfeilde tooke the oath of Freedom of this Colony.

## JUDSON'S Sentence

Sarah Judson of Dedham, complained of to this Court for committing Fornication & having a bastard Childe, which shee owned in Court. The Court doe Sentence her to bee whip't with twenty Stripes or to pay five pound in mony fine to the County & Fees of Court standing comitted &<sup>a</sup>.

## Committee for Milton

The Court appoints & Empowers Capt<sup>a</sup> Hopestill Foster Capt<sup>a</sup> Richard Brackett & Serj<sup>t</sup> Thomas Gardn<sup>r</sup> as a Committee to repaire to Milton & veiw a new high-way laide out in that Town & to hear the objections of any persons against the saide way & their reasons for it & to compose their differences if it may bee, but if not to represent them to the next Court of this County: & all persons concerned are required to attend the saide Committee, they being to appoint the time.

## CHANDLER'S discharge

Vpon due proclamacion made John Chandler was discharged from his bonds of good behavio<sup>r</sup>

## DURALL'S Sentence

Nicholas Durall, being committed for stealing Horses (the one belonging to m<sup>r</sup> William Brown jun<sup>r</sup> the other to John Turno<sup>r</sup>) saddles & Bridles out of m<sup>r</sup> William Brown senio<sup>r</sup> of Salem his Stable on the Sabbath day, which hee confessed in Court & saide there was five of them, which complotted to run away viz<sup>t</sup> John Burington, Edward Fish Becketts man, Richard Hollingsworths Negro Tom, Thomas Clarke Cliffords Serv<sup>t</sup> & himselfe & that hee opened the stable dore by taking out the pin which Fastened it. The Court Sentences the saide Durall to bee whip't with five & twenty Stripes severely laide on & to pay to m<sup>r</sup> William Brown jun<sup>r</sup> Fifteen pounds in mony to

John Turno<sup>r</sup> eight pounds in mony to m<sup>r</sup> William Brown sen<sup>r</sup> Sixteen Shillings in mony & to Thomas Ives ten Shillings in mony being halfe that three fold restitution that the law requires & to pay Fees of Court standing committed &<sup>a</sup>

#### BURRINGTONS Sentence

John Burrington, being committed for Stealing Horses (the one belonging to M<sup>r</sup> William Brown jun<sup>r</sup> the other to John Turno<sup>r</sup>) Sadles & bridles out of m<sup>r</sup> William Brown sen<sup>r</sup> of Salem [127] his stable on the lord's day, which he confessed in Court & saide there was five of them as Durall had saide that had complotted together to run away & they were a month in Effecting theire designe & also confessed that hee stole out of his Master John Becket his sonn's Chest severall wearing clothes. The Court doe Sentence saide Burrington to bee whip't with twenty stripes severely laide on & to pay to m<sup>r</sup> William Brown jun<sup>r</sup> Fifteen pounds in mony to John Turno<sup>r</sup> eight pounds in mony to m<sup>r</sup> William Brown sen<sup>r</sup> Sixteen Shillings in mony & to Thomas Ives ten Shillings in mony being halfe that threefold restitution that the law requires & to his Master John Becket three pounds sixteen Shillings in mony & his goods againe & to pay Fees of Court standing committed &<sup>a</sup>

#### FREAK'S Administ<sup>r</sup>

Administracion to the Estate of Francis Sampson late of Nevis deceased is granted unto m<sup>r</sup> John Freake hee bringing in an Inventory of saide Estate upon Oath & giving security to Administer according to law.

#### Court Order about Ship Providence

In Answer to the petitions presented to this Court by Henry King & Edward Bant who lately brought into the River of piscataquay the Ship Providence of Falmoth, whereof saide King was Mate in a Voiadge from England to Virginia in which Voiadge they were surprized by a Dutch man of Warr & by the Petition<sup>rs</sup> & Company rescued out of theire hands who haue since surrendred the saide Ship & her lading into the hands of m<sup>r</sup> Nathaniell Fryer for the securing of & looking after both in behalfe of the owners. The Court doe order & empower m<sup>r</sup> Elias Stileman & m<sup>r</sup> Henry Deering together with saide Fryer or any two of them to take a perticuler Acco<sup>t</sup> of y<sup>e</sup> state

of saide Ship & to Inventory the Goods brought in by & belonging to her & to make provition for the securing of both for the right Owners, making a return thereof to the present Dep<sup>t</sup> Gov<sup>r</sup> by the seventh of May next: And the saide Fryer is further ordered to disburst for the Company arrived in the saide Ship what maybe for the Supply of their present necessities & alsoe order that hee take care that the 8 Dutchmen brought in prison<sup>rs</sup> in the saide Ship bee forthwith brought to Boston before Authority to bee disposed of as the matter may require & for the other parts of the Petitions touching Salvage or Wages the Court refers them to the Councill at their next meeting.

These Petitions were sent for & delivered into the Councill at their Sitting.

[Most of the papers of this maritime case, including descriptions of several minor sea fights in the third Anglo-Dutch war, are printed in the Records of the Court of Assistants, iii. 226-29. The Providence, of Falmouth, Captain Thomas Raddon, was an English vessel laden with a mixed cargo for Virginia. She sailed from Plymouth on January 15, 1673, in a convoy of ninety sail, from which she parted eighty leagues west of Scilly. On April 4, 1673, when approaching the Capes of the Chesapeake, the Providence was captured by the frigate Staatswelvevaart (Commonwealth) of Flushing, 12 guns and 96 men, commanded by Cornelius Drelincourt. The "master merchant" and 10 men were taken aboard the Staatswelvevaart, while Captain Raddon and six men were left on the Providence, under command of the Dutch prize crew. The Providence became separated from her captors, and six days later met with a sail which proved to be the Little Barkley of London, Captain Nicholas Prynne. Upon her approach the Dutch commander, presenting a pistol at Captain Raddon's breast, forced him to answer the Barkley's hail by an invitation to come aboard. Having accepted, the visitors (who included Edward Bant the mate) were surprised and overpowered by the Dutch, three of whom went on board the Little Barkley and made prize of her. The following day, while Edward Bant and his men were prisoners in the hold of the Providence and the Dutchmen were ransacking the Barkley, the Englishmen remaining on the Barkley surprised their Dutch captors and sailed away with the vessel. About six hours later, the two groups of Englishmen on the Providence made a concerted rush on the Dutch prize crew, overcame them, and brought the Providence under her original captain into the harbor of Piscataqua (Portsmouth, New Hampshire), which was then within the Massachusetts Bay jurisdiction.

Numerous claimants appeared for the very valuable cargo of the Providence. Captain Raddon, faithful to his owners, wished to proceed on his voyage to Virginia; King and Bant, the two mates, demanded salvage; the rest of the crew, wages. Allwin Child put in a claim on the ground that Captain Raddon had not done "his duty as he ought and might" in failing to seize upon one John Terry, who by mutiny had taken the Portuguese vessel St. Anthony, consigned to the said Child. The matter was referred to the Council of Magistrates. On June 11, 1673 Governor Leverett and the magistrates ordered Nathaniel Fryer to turn the Providence "and what was in hir" over to Captain Raddon, for the use and benefit of the owners; and after the Captain had bonded himself in the sum of 500*l* to hold the Colony harmless against any consequences of Child's allegations being proved, he was allowed to proceed to Virginia.

The following inventory of the stores and equipment of the Providence is in S. F. 1257.16, where her complete bill of lading will also be found.

2 brass panns	fore bouleings & braces & clue garnets
69 Duch blue potts	fore Jeere
2 small Sloope sayles	fore buntlins & fore top saile clulings
3 small quoiles cordidge	fore top mast Staye
4 quarter caske of brandy	fore topsaile bouleing & lifts
2 puncheons of mault	fore topsaile sheetes
3 small caske of wine, 1 part out s <sup>d</sup>	fore topmast backstaves
to be the Mast <sup>r</sup> s	fore topsaile tie & halliards
40 white Jarrs of oyle	fore tacks
13 doz: stone bottles	fore topmast shrouds
11 barrells of Bread	fore sheets
1 old missen	fore sheete blocks
1 old fore saile	fore topsaile sheete blocks
1 new fore topsaile	Maine boleings — Missen Brailes
1 maine top saile	Maine topsaile lifts
1 maine saile	Maine top saile braces
1 fore saile	Maine braces
1 maine topsaile	Maine topsaile tie & Halliarde
1 Ensigne	Maine clue garnete
1 Jack	Maine leich linee
1 pennant	Maine top mast back staiee
1 long boats new maine saile & fore	Maine topmast sheete
saile	Maine topmast shroude
1 sprittsell topsaile	Maine buntlins
1 new spritsaile	Maine topsaile bowleings
1 maine saile	Maine tacke
1 missen top Saile	Maine topmast clulings & lifts & maine
1 missen	Jeere
1 old fore top saile	Maine topmast staye, to[p]mast bunt-
1 fore topsaile	lins
1 old fore saile	Maine Sheets, Sheete blocks]



Cap<sup>t</sup> SCARLETTS fine remitted

Vpon the request of Cap<sup>a</sup> Sammuell Scarlett, The Court remitts the fine of twenty Shillings imposed on him by the last County Court for not attending the service of the Jury.

Mendum presentm<sup>t</sup> Dismissed

Vpon the acknowledgment of the Church of Mendum & the Testimony of the Church Messengers; theire presentm<sup>t</sup> is dismissed & the Court leaues them to attend the law. [128]

Medfeilde Commission<sup>rs</sup>

Vpon the request of the Town of Medfeilde Cap<sup>t</sup> George Barber m<sup>r</sup> Ralph Wheelock & Deacon Thomas Wight are appointed Commission<sup>rs</sup> for there Town to end small causes for the yeare Ensuing.

Weymoth Commission<sup>rs</sup>

Vpon the request of the Town of Waymouth, The Court appoints Capt. William Torrey Leif<sup>t</sup> John Holbrook & Deacon Thomas Dyer Commission<sup>rs</sup> to end small causes for the saide Town for the yeere Ensuing.

## [Discharges from bonds]

Vpon due proclamacion made Humphry Cornby was discharged from his bonds of good behaviour.

Vpon due proclamacion made Sammuell Smith was discharged from his bonds of good behaviour.

Vpon like proclamacion Thomas Leader was discharged from his bonds of good behaviour.

Vpon like proclamacion Jacob Wainwright was discharged from his bonds of good behaviour.

## CHAMBERLIN'S Sentence

William Chamberlin of Hull being presented for absenting himselfe from the publique worship of god on the Sabbath daeys which hee owned in Court. The Court Sentences him to pay twenty Shillings in mony fine to the County with Charges of prosecution & Fees of Court standing committed &<sup>a</sup>

## OWENS Sentence

Thomas Owen, Servant to John Cleare jun<sup>r</sup> being committed for wounding John Harker in the Arme with a Shoemakers knife of which hee was convict in Court. The Court doe Sentence him to bee whip't with Fifteen Stripes & to pay to John Harker four pounds in mony & Fees of Court standing committed &<sup>a</sup>

VEERING discharg<sup>d</sup> from his bonds

Vpon due proclamacion made John Veering was discharged from his bonds of good behaviour.

GRANT discharg<sup>d</sup> from his bonds

Vpon due proclamacion made Thomas Grant was discharged from his bonds of good behaviour.

## HUNTERS crime

Mary Hunter bound over to this Court for committing of Fornicacion & having an illegitimate Childe which shee owned in Court & charged Joseph Cowell with being the Father of her Childe & tooke her Oath thereof as followeth. You doe here Swear by the great & dreadful name of the everliving god that the child lately born of yo<sup>r</sup> body being a Son was begotten by Joseph Cowell & that hee & noe man else is the Father thereof, soe help you god.

Sworn in Court. pr<sup>o</sup> May 1673. As Attests Isaac Addington Cler.

## HUNTERS Sentence

The Court having considered of her offence doe Sentence her to bee severely whip't with thirty stripes & to pay Fees of Court standing committed till the Sentence bee performed. [129]

## COWELL's Sentence

Joseph Cowell, being bound over to this Court to Answer vpon suspicion of his committing Fornicacion with Mary Hunter hee being called to Answer to it did not appeare his Sureties being called to bring him in made noe answer. The Court ordered a default to bee Entred: but afterwards appearing & being convict of too much familiarity with the saide Hunter & shee Swearing that hee & onely hee was the Father of her illegitimate Childe. The Court Sentanceth

the saide Cowell to bee whip't severely with thirty Stripes & to pay four shillings a weeke one third in mony one third in goods & one third in provitions towards the maintenance of the Child lately born of the body of the saide Mary Hunter untill hee either marry with her or this Court take further Order & to pay Fees of Court standing committed &<sup>a</sup> The saide Cowell next day sent in a petition to the Court wherein hee did confess that he was the Father of the Childe lately born of saide Mary Hunter.

#### ZACHARIAH Indian's Sentence

Zachariah Indian, being committed for Stealing a horse belonging to Thomas Avery of New London out of the yard of Sammuell Williams of Roxbury all which hee confessed in open Court: The Court Sentences him to bee whip't severely with twenty Stripes & to pay to saide Thomas Avery seven pounds in Mony & Fees of Court standing committed &<sup>a</sup>.

#### BULLARD & ADAMS' Discharge

Vpon certificate from Capt<sup>a</sup> George Barber of Medfeilde John Bullard & Jonathan Adams are both discharged from ordinary treynings.

#### CAMBLE Presented

The wife of Charles Camble & her eldest Daughter being presented for pernicious lying & making disturbance among the Neighbours, the woman appeared not by reason of Sickness but the Daughter appearing & her Father testifying that shee had been corrected privately. The Court admonished her & soe dismissed her.

#### STILES Presented

Robert Stiles being presented for an idle person: The Court admonished him & soe dismissed him.

#### LINCOLN present<sup>d</sup>

Daniell Lincoln sonne of Sammuell Lincoln being presented for cutting off the eares of a Sheepe & selling that Sheepe which was none of his own, of which hee was convict in Court. The Court Sentanceth him to bee admonished in open Court & to pay charges of prosecution & Fees of Court.

Execucion issued. 30. 7<sup>mo</sup> 73. for. 16 y<sup>e</sup> 8. m<sup>o</sup> to Baker & Loring

Committee for auditing y<sup>e</sup> Treasuro<sup>rs</sup> Acco<sup>ts</sup>

The Court appoints Capt<sup>a</sup> Hopestill Foster Capt Joshua Hubbard & Capt James Oliver to bee a Committee to audit the two Accounts for the yeare. 1671. & 1672. given into the Court by the Worshipfull Edward Tyng Esq<sup>r</sup> Treasuro<sup>r</sup> of the County of Suffolke & to make return thereof to the next Court of this County.

## READ'S discharge

Vpon due proclamacion made William Read jun<sup>r</sup> was discharged from his bonds of good behaviour. [130]

Vpon due proclamacion made Fathergon Dinely was discharged from his bonds of good behaviour.

## Freemen Sworn

Capt<sup>a</sup> Daniell Henchman Timothy Thornton Ephraim Searle & William Smith all of Boston; tooke the Oath of Freedom of this Colony.

VEERING'S Sentence  
remitted upon paiment of: 5<sup>li</sup>

Vpon the humble petition of Mercy Veering The Court remits the former Sentence against her, of the last County Court's upon her paiment of a fine of five pounds in mony to the County within six weeks & in default of paiment then her Sentence to bee forthwith Executed on a thursday after Lecture.

Court Order to m<sup>r</sup> Rock

Whereas Administracion was granted to m<sup>r</sup> Joseph Rock upon the Estate of the late m<sup>rs</sup> Martha Coggan Executrix to m<sup>r</sup> John Coggan: This Court doe order that the saide administrato<sup>r</sup> bring in an account of his administracion to the next Court of this County, that the Court may take such further order thereabout as they shall see meete.

## FAIREBANK'S Sentence

George Fairebank in or neere Medfeilde being presented for absenting himselfe from the publique worship of god on the Sabbath dayes, hee owned the presentm<sup>t</sup> as to Medfeilde, but saide hee went



often to other places as to Dedham & <sup>a</sup> The Court having considered of his offence Sentence him to bee admonished in open Court & to pay charges of prosecution with Fees of Court.

#### FAIREBANKS'S Sentence

Sammuell Eleazer & Jonas Fairebank sonnes of saide George Fairebank being complained of by Joseph Clarke Constable of Medfeilde that they abused him in the Execucion of his office in taking away from him his constables Staffe: the saide Jonas Owned in Court that hee tooke the saide Staffe & carried it out of dores with him but saith hee brought it in againe, the Constable denied that hee had it afterwards; And that the saide Eleazer Fairebank made his Escape from saide Constable when hee came with an Attachm<sup>t</sup> to secure him for appearance at the Court to answer as aboue after he had served it on him: The Court having considered their offence doe Sentence the saide Sammuell Eleazer & Jonas Fairebank to deliver to Jonas Clarke Constable of Medfeilde his Constables Staffe within eight dayes next following or to pay Forty Shillings in mony fine to the County with Charges of prosecution & Fees of Court & further there being a complaint Exhibited to the Court by the Selectmen of Medfeilde against Jonas Fairebank for breaking open their School house dore: The Court orders the saide George Fairebank to give bond of five pounds for his Son Jonas his appearance to Answer for the same [131] at the next Court of this County unless in the meane time hee give satisfaction to the saide Selectmen for the same being certified under their hands to this Court: The saide George Fairebank acknowledged himselfe in open Court bound accordingly.

Execucion issued for 30<sup>s</sup> 6. 4<sup>mo</sup> 1673

bond for Jonas Fairebanks appearance at next County Court

#### ADAMS fined 5<sup>li</sup>

Jonathan Adams of Medfeilde being presented for absenting himselfe from the publike worship of God on the Sabbath dayes, hee owned in Court that hee worship't God but did not frequent the publike Assembly. The Court having considered of his offence Sentence him to pay five pounds in mony fine to the County & Fees of Court.

## Court order about BIRCH

Jonathan Birch, being complained of by the Selectmen of Dorchester for living Idely & they putting in caution against his residing in their Town: The Court orders the Selectmen of Dorchester to dispose of the saide Jonathan Birch to Service according to Law; unless hee provide himselfe of a Master to their approbacion within ten dayes next following

## STARKEY bound to the behavior

John Starkey being bound over to this Court & also presented by the Grand jury for conveying away Jamina Biss from under the law being Suspected to bee with Childe: The saide Starky desired the Liberty of a Jury, which was granted . . . The Jury . . . finde the aforesaide Starkey suspitiously guilty for being instrumentall in or hiring William Timberlak to convey away Jamina Biss late Drue which went under the name of Elisabeth Marten: The Court doe Sentence the saide Starkey to give in bond for the good behaviour till the next Court of this County one hundred pounds himselfe & fifty pounds a peice two Sureties which hee accordingly did under hand & Seal:

## WHITWELL bound over to the Court of Assistants

Bartholmew Whitwell, being bound over to this Court to answer for his horses killing of a [132] Childe of Christopher Smiths: The Court Orders that the saide Whitwell give bond of two hundred pounds himselfe & one hundred pounds a peice two Sureties to Answer it at the next adjournment of the Court of Assistants.

## TIMBERLAK bound to the behavior

William Timberlak bound over to this Court to answer for his conveying away Jamina Biss late Drue from under the cognisance of the law who is suspected to bee with childe & from her relations The Court orders that the saide Timberlak give bond of one hundred pounds himselfe & fifty pounds a peice two Sureties for his good behavior till the next Court of this County & then to appeare standing committed till hee performe it

## GATCH admonisht

Edmund Gatch Servant to Robert Sanford bound over to this Court to Answer for his overrunning of a Childe with his Cart, which hee owned in Court The Court Sentences him to bee admonished & to pay Fees of Court.

## Court order to Deacon PARCKE

In Answer to the Petition of Deacon William Parck's: The Court doe order & hereby Empower the saide Parcke to dispose of & put out to Service the Childe lately begotten in his house by Silvanus Warro his Negro, till it bee thirty yeares of age for the defraying those necessary charges hee hath expended about the keeping thereof.

HUDSONS Licen<sup>e</sup> & bond

On certificate from the Select men of Boston Capt<sup>a</sup> William Hudson had his Licence renewed for the yeare Ensuing to keepe a house of publike Entertainm<sup>t</sup> & to sell wine beere & brandy by Retaile: and the saide Cap<sup>t</sup> William Hudson as principle in ten pounds & Daniell Stone & Marshall Richard Wayte as Sureties in five pounds apeice acknowledged themselues jointly & severally bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Cap<sup>t</sup> Hudson shall observe the Laws title inkeepers with all theire additions & if hee shall sell Sider not to sell it for aboue two pence per quart & that hee shall not allow of any gaming in his house.

## [ Boston Licences ]

On Like certificate m<sup>r</sup> John Viall had his Licence renewed for the yeare Ensuing to keepe a house of publike Entertainment & to sell wine & beere by retaile & the saide John Viall as principall in ten pounds & Dan<sup>l</sup> Staone & John Woodmancy as Sureties in five pounds apeice acknowledge themselues bound as abouesaide.

On Like certificate John Turno<sup>r</sup> had his Licence renewed for the yeare Ensuing to keepe a house of publike Entertainment & to sell wine & beere by retaile & the saide John Turno<sup>r</sup> as principall in ten pounds & Cap<sup>t</sup> James Oliver & Thomas Blighe as Sureties in five pounds apeice acknowledged them selves bound as abousesaide.

On like certificate Cap<sup>t</sup> William Wright had his licence renewed

for the yeare Ensuing to keepe a house of publique entertainment & to sell wine & beere by retaile & the saide Cap<sup>t</sup> Wright as principall in ten pounes & Rich<sup>d</sup> Woody & Tho: Bingly as sureties in 5<sup>li</sup> apeice acknowledged themselves bound as Abouesaide

On like certificate Francis Hudson had his lecence renewed for the yeare Ensuing to keepe a house of publique Entertainment & to sell beere & Sider by retaile & the saide Hudson as principall in .10<sup>li</sup> & Daniell Turill sen<sup>r</sup> & Tho: Bill as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound as abouesaid. [133]

On like certificate Clement Gross had his Licence renewed for the yeare Ensuing to keepe a house of publique Entertainment to sell beere & sider by retaile & the saide Gross as principall in 10<sup>li</sup> & Cap<sup>t</sup> W<sup>m</sup> Hudson & Marshall Richard Wayte as sureties in 5<sup>li</sup> apeice acknowledged themselves bound as afore saide.

On Like certificate the Widdow Vpshall had her Licence renewed for the yeare Ensuing to keepe a house of publique Entertainment to sell beere & Side<sup>r</sup> by retaile & Tho: Bill for y<sup>e</sup> s<sup>d</sup> Vpshall as principall in 10<sup>li</sup> & as Surety in 5<sup>li</sup> more & Daniell Turill sen<sup>r</sup> as Surety in 5<sup>li</sup> acknowledged themselves bound as aforesaide.

On like certificate William Pollard had his licence renewed for the yeare Ensuing to keepe a house of publique Entertainm<sup>t</sup> to sell beere & Sider by retaile & y<sup>e</sup> saide W<sup>m</sup> Pollard as principall in 10<sup>li</sup> & Cap<sup>t</sup> James Oliver & John Woodmancy as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound as aforesaide.

On Like certificate Nathaniell Bishop had his licence renewed for the yeare Ensuing to keepe a house of publique entertainm<sup>t</sup> & to Sell Beere & Sider by retail & the s<sup>d</sup> Bishop as principall in 10<sup>li</sup> & Cap<sup>t</sup> James Oliver & James Brading as Sureties in 5<sup>li</sup> apeice adknowl- edge themselves bound as aforesaid.

On like certificate Sammuell Norden had his Licence renew<sup>d</sup> for the yeare Ensuing to keepe a house of publique Entertainm<sup>t</sup> to sell beere & Sider by retaile & the s<sup>d</sup> Norden as principall in 10<sup>li</sup> & W<sup>m</sup> Kent & Sammuell Mosely as Sureties in 5<sup>li</sup> apeice were alike bound.

On like certificate Robert Cox had his licence renewed for the yeare Ensuing to keepe a house of publique Entertainm<sup>t</sup> to sell beere & Sider by retail & the s<sup>d</sup> Cox as principall in 10<sup>li</sup> & Benj<sup>a</sup> Negus & John Keyne as Sureties in 5<sup>li</sup> apeice were alike bound.



On like certificate John Francks had Licence granted him to keepe a house of publique Entertainm<sup>t</sup> for the yeare Ensuing to sell beere & Sider by retail & the s<sup>d</sup> Francks as principall in 10<sup>li</sup> & Rich<sup>d</sup> Woody & John Woodmancy as Sureties in 5<sup>li</sup> apeice were alike bound

On Like certificate Widdow Courser had her Licence renew<sup>d</sup> for the yeare Ensuing to keepe a house of publique Entertainm<sup>t</sup> to sell beere & sider by retail & Tho: Dewer as principall & Surety in 15<sup>li</sup> & Richard Knight as Surety in 5<sup>li</sup> were alike bound.

On like certificate Edmund Jackson had Licence granted him to keepe a house of publique Entertainm<sup>t</sup> for the yeare ensuing to sell beere & sider by retail & y<sup>e</sup> s<sup>d</sup> Jackson as principall in 10<sup>li</sup> & Tho: Matson sen<sup>r</sup> & John Andrews as Sureties in 5<sup>li</sup> apeice were alike bound. [134]

On Like certificate L<sup>t</sup> John Smith of Winnisimmet had his Licence renewed for the yeare ensuing to keepe a house of publique Entertainm<sup>t</sup> to sell beere & Sider by retaile & y<sup>e</sup> s<sup>d</sup> John Smith as principall in 10<sup>li</sup> & Rich<sup>d</sup> Wharton & Jn<sup>o</sup> Osborn as Sureties in 5<sup>li</sup> apeice were alike bound.

On Like certificate William Salter had his Licence renewed for the yeare ensuing to sell beere & Sider by retaile & the s<sup>d</sup> William Salter as principall in 10<sup>li</sup> & Jonath: Negus & Joseph Belknap as Sureties in 5<sup>li</sup> apeice were alike bound & especially that y<sup>e</sup> s<sup>d</sup> Salter should observe the Laws respecting the excise.

On Like certificate Widdow Wardell had her licence renewed for the yeare ensuing to keepe a house of publique Entertainment to sell beere & Sider by retail & Seth Perry her son as principall in 10<sup>li</sup> & Arthur Mason & Ephraim Savage as Sureties in 5<sup>li</sup> apeice were alike bound.

On Like certificate William Kent has his Licence renewed for the yeare Ensuing to keepe a Cookes Shop & as an addition to sell wine & strong beere with his victualls & the s<sup>d</sup> W<sup>m</sup> Kent as principall in 10<sup>li</sup> & Cap<sup>t</sup> James Oliver & L<sup>t</sup> Jn<sup>o</sup> Smith as Sureties in 5<sup>li</sup> apeice were alike bound.

On Like certificate Rebecca Winsor had her licence renewed for the yeare ensuing to keepe a Cookes Shop & had as an addition Licence granted her to sell strong beere w<sup>th</sup> her victualls & the s<sup>d</sup> Rebecca Winsor as principall in 10<sup>li</sup> & Cap<sup>t</sup> James Oliver & James Brading as Sureties in 5<sup>li</sup> apeice were alike bound.

On Like certificate Benj<sup>n</sup> Phippen had Licence granted him to keepe a Cookes Shop & to sell strong beere with his victualls & the s<sup>d</sup> Benj<sup>n</sup> Phippen as principall in 10<sup>li</sup> and John Warren & Phillip Squire as Sureties in 5<sup>li</sup> apeice acknowledged themselves alike bound

On like certificate Eliz<sup>a</sup> Connigrave had Licence granted her to keepe a Cookes Shop & to sell beere at one penny per quart & the s<sup>d</sup> Connigraue as principall in 10<sup>li</sup> & Jon<sup>a</sup> Shrimpton & Tho: Platt as Sureties in 5<sup>li</sup> ap<sup>s</sup> acknowledged themselves bound as afore that the s<sup>d</sup> Connigraue shall not transgress the laws by exceeding her Licence.

On Like certificate W<sup>m</sup> Norton had licence granted him to sell strong beere out of dores & the s<sup>d</sup> Norton as principall in 10<sup>li</sup> & Daniell Turill sen<sup>r</sup> & Tho: Bill as sureties in 5<sup>li</sup> apeice acknowledge themselves bound as aboue.

William Toy had licence granted him to distill & retaile strong Waters by small quantities & the s<sup>d</sup> Toy as principall in 10<sup>li</sup> & Jn<sup>o</sup> Toy & Isaiah Toy as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound [135] as afore on condicon that the s<sup>d</sup> Toy shall observe the Laws concerning distilling & retailing of strong waters

Thomas Smith had his Licence renewed for the yeare Ensuing to distill & retail strong waters by small quantities & the s<sup>d</sup> Smith as principall in 10<sup>li</sup> & Elisha Cooke & Rich<sup>d</sup> Knight as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound as aboue.

Anne Puglice had Licence granted her for the yeare Ensuing to distill & retail strong Waters by small quantities & George Puglice as principall for his wife in 10<sup>li</sup> & Rich<sup>d</sup> Collicot & William Bartholnew as Sureties in 5<sup>li</sup> apeice were alike bound.

Elisha Hutchinson had his Licence renewed for the year ensuing to retaile strong waters by small quantities & the s<sup>d</sup> Hutchinson as principall in 10<sup>li</sup> & Richard Knight & John Vsher as Sureties in 5<sup>li</sup> apeice were alike bound

Richard Way had his licence renewed for the yeare ensuing to retaile strong Waters by small quantities & the s<sup>d</sup> Way as principall in 10<sup>li</sup> & Cap<sup>t</sup> W<sup>m</sup> Hudson & Samm Mosely as Sureties in 5<sup>li</sup> apeice were alike bound.

M<sup>r</sup> Simon Lynde & John Sweete had theire Licences renew<sup>d</sup> for the yeare ensuing to Sell strong Liquo<sup>rs</sup> by small quantities to Fishermen as formerly.

Mr<sup>s</sup> Jane Bernard had her licence renewed for the yeare ensuing to keepe a house of publique Entertainm<sup>t</sup> for the selling of Coffee & bottle Sider & Bartholmew Bernard her husband as principall in 10<sup>li</sup> & Dan<sup>li</sup> Turell sen<sup>r</sup> & Nathan<sup>li</sup> Adams sen<sup>r</sup> as Sureties in 5<sup>li</sup> apeice acknowledged themselves jointly & severally bound to the Treasuro<sup>r</sup> of the County on condicion that the s<sup>d</sup> Jane Bernard should observe her licence & not transgress the law.

[Licences of other towns]

On certificate from the Selectmen of Roxberry Samm: Ruggles had his Licence renewed for the yeare Ensuing to keepe a house of publique Entertainm<sup>t</sup> & sell wine & beere by retail & the s<sup>d</sup> Ruggles as principall in 10<sup>li</sup> & John Morse & Tho: Skinner as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound as above saide.

On certificate from the Selectmen of Dorchester Nicholas George had his Licence renewed for the yeare ensuing to keepe a house of publique Entertainm<sup>t</sup> & to sell wine & beere by retail & y<sup>e</sup> s<sup>d</sup> Nicholas George as principall in 10<sup>li</sup> & William Kent & Sam: Mosely as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound as above.

On certificate from the Selectmen of Milford W<sup>m</sup> Daniell had his Licence renewed for the yeare ensuing to keepe a house for publick entertainm<sup>t</sup> [136] & to sell wine & beere by retaile & the s<sup>d</sup> William Daniell as principall in 10<sup>li</sup> & Rob<sup>t</sup> Badcock & Edward Voss as Suralties in 5<sup>li</sup> apeice acknowledged themselves jointly & severally bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Daniell should observe the laws title inkeepers with all their additions & that if hee sold Sider hee should not sell it for aboute two pence per quart & that hee should not allow of any gameing in his house.

On certificate from the Selectmen of Brantery John Mills had his Licence renewed for the yeare Ensuing to keepe a house of publique entertainm<sup>t</sup> & to sell wine & beere by retail & the s<sup>d</sup> John Mills as principall in 10<sup>li</sup> & Peter Bracket as Surety in 5<sup>li</sup> acknowledge themselves bound as above.

On certificate from the Selectmen of Hull Isaac Lobdell had his Licence renewed for the yeare ensuing to keepe a house of publique entertainm<sup>t</sup> & to sell wine & beere by retail & the s<sup>d</sup> Lobdell as principall in 10<sup>li</sup> & John Bull & David Adams as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound as aboues<sup>d</sup>

On certificate from the Select men of Hingham Nathaniell Beales had his Licence renewed for the yeare ensuing to keepe a house of publique Entertainment & to sell wine & Beere by retail & the s<sup>d</sup> Beales as principall in 10<sup>li</sup> & Joshua Hubbard & Isaac Johnson as Sureties in 5<sup>li</sup> apeice were alike bound.

On Like certificate John Jacobs of Hingham had his Licence renewed for the yeare ensuing to keepe a house of publique Entertainment<sup>t</sup> & to sell wine beere & strong Liquors by retail & the s<sup>d</sup> Jacobs as principall in 10<sup>li</sup> & Cap<sup>t</sup> James Oliver & Joseph Webb as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound as aboues<sup>d</sup>

On certificate from the Selectmen of Dedham Jn<sup>o</sup> Aldis had his Licence renewed for the yeare ensuing to keepe a house of publique Entertainment<sup>t</sup> to sell wine & beere by retail & the s<sup>d</sup> Aldis as principall in 10<sup>li</sup> & Cap<sup>t</sup> James Oliver & Joshua Fisher as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound as aboues<sup>d</sup>

The Court adjourned from the 2<sup>d</sup> of May to the 29<sup>th</sup> same. [137]

The Court met according to Adjournm<sup>t</sup> May: 29<sup>th</sup> 1673.

Present

JN <sup>o</sup> LEVERETT Esq <sup>r</sup> Go <sup>r</sup>	} Assists.
EDW. TYNG Esq <sup>r</sup>	
W <sup>m</sup> STOUGHTON Esq <sup>r</sup>	
THO: CLARKE Esq <sup>r</sup>	

Order about WITHERDENS Estate.

M<sup>r</sup> John Faireweather Constable having by vertue of a warrant from John Leverett Esq<sup>r</sup> Dep<sup>t</sup> Gov<sup>r</sup> taken care to make provition for Mary Witherden in her sickness & since her death for her Funerall: The Court Orders the s<sup>d</sup> m<sup>r</sup> Faireweather to defray those charges expended upon the s<sup>d</sup> Mary Witherden in the time of her Sickness & at her Funerall & to expose the rest of her Estate to Sale by an outcry in behalfe of the Credito<sup>rs</sup> without they see good to bestow it on the Childe.

DORMAN MORRICE. Sent<sup>a</sup>

Dorman Morrice, being bound over to this Court to answer for his abusing & strieking of the Watch in Boston of which hee was



convict in Court: The Court Sentences the s<sup>d</sup> Morrice to bee whipt severely with fifteen stripes & to pay Fees of Court standing committed &<sup>a</sup>

ISAAC GROSSES Sent<sup>a</sup>

Isaac Gross, being bound over to this Court to answer for his conveying & carrying away of Mary Mirack Serv<sup>t</sup> to m<sup>r</sup> Anthony Stoddard from her Relations & from the cognizance of the law shee being with Childe by Fornicacion & calling of her his wife upon his journey all which hee was convict of by his own confession: The Court Sentences the s<sup>d</sup> Gross to pay five pound in mony fine to the County & to give in bond for his good behavio<sup>r</sup> till the next Court of this County of 10<sup>li</sup> himselfe & 5<sup>li</sup> apeice two Sureties & to pay Fees of Court standing committed &<sup>a</sup> Afterwards upon his humble petition the Court was pleased to remit the bond for the behavio<sup>r</sup>

ELIZ<sup>a</sup> EDSALLS Sent<sup>a</sup>

Eliz<sup>a</sup> Edsall convict by her own confession in Court of concealing & hideing Mary Mirack & being instrumentall in conveying her away from under the cognizance of the law who was with Childe by Fornicacon. The Court Sentences the s<sup>d</sup> Elisabeth to give in bond for her good behavio<sup>r</sup> of 5<sup>li</sup> apeice two Sureties till the next Court of this County & to pay Fees of Court standing committed &<sup>a</sup>

WAINWRIGHTS Sent<sup>a</sup>

Jacob Wainwright bound over to this Court upon suspicion of his robbing one John Wales upon Boston neck in the night: s<sup>d</sup> Wainwright Owned that hee came over s<sup>d</sup> neck that night & that hee lay out of his Masters house; but it being proved that hee was at Roxbury at that time the Robberry was committed: The Court Sentences him for his night walking to bee sent to the house of correction & to bee received & entertained according to the Laws & orders of the house & to pay Fees of Court. Vpon [138] the humble request of his Father & himselfe the Court was pleased to remit this Sentence upon his paiment of a Fine of Fifty shillings in mony to the County & Fees of Court.

CHAMBERLINS Sent<sup>a</sup>

John Chamberlin bound over to this Court to Answer for the same as Wainwright: Owned that hee came from Roxbury late over the neck that night; but it being testified that hee was at Roxbury at the time when the Robbery was committed: The Court Sentences him for his night walking to bee sent to the house of correction & to bee received & entertained according to the Laws & Orders of the house & to pay Fees of Court: Vpon his humble request and promiss of Amendment The Court was pleased to remit this Sentence upon his paiment of a fine of thirty shillings in mony to the County & Fees of Court.

ALICE THOMAS Sent<sup>a</sup>

Alice Thomas being bound over to this Court upon the accusation of an indian for selling him wine & the Court considering the order of the Generall Court relateing to s<sup>d</sup> Thomas dated October 1672 against her inhabiting in this Town: The Court doe Sentence her to bee sent to prison till shee give in security of one hundred pounds herselfe & fifty pounds apeice two sureties for her observance of the s<sup>d</sup> order of Generall Court & to pay Fees of Court: Vpon the request of saide Alice Thomas the Court granted her liberty till too morrow at twelve a clock to bring in her Sureties.

[This was not Alice's first offense, nor her last. Consult index.]

HOPPINS Sent<sup>a</sup>

Stephen Hoppin sen<sup>r</sup> bound over to this Court to Answer for his being drunck & lying in the highway. hee owned in Court hee might bee the worse for what hee had dranck at the time mentioned: The Court Sentences s<sup>d</sup> Hoppin to bee whipt with ten stripes & to pay fees of Court.

## BIRCHES bond forfeited

Jonathan Birch being bound over to this Court & Thomas Birch being his Surety, both principall & Surety made a default for non appearance upon due calling: The Court declares both principall and Sureties bond to bee forfeited.

SMITH fined. 5<sup>li</sup>

Elisabeth Smith convict by her own confession in Court of selling strong liquors by small quantities contrary to Law: The Court Sentences the s<sup>d</sup> Smith to pay five pounds in mony fine to the County according to Law. & to give in bond for the good behavio<sup>r</sup> of 20<sup>li</sup> her selfe & 10<sup>li</sup> apeice two Sureties till the next Court of this County & to pay Fees of Court Standing committed &<sup>a</sup> [ 139 ]

WAMPUS Sent<sup>a</sup>

John Wampus being committed to prison to Answer for his being drunck & for breach of his bond in his wifes non appearance according thereunto before m<sup>r</sup> Tho: Clarke Commission<sup>r</sup> The Court Sentences the s<sup>d</sup> Wampus to pay ten shillings in mony as a fine to the County & to give in bond for the good behavio<sup>r</sup> of 20<sup>li</sup> himselfe & 10<sup>li</sup> apeice two Sureties & to pay Fees of Court standing committed & leaue the Treasuro<sup>r</sup> to prosecute him for the breach of his bond.

The Committee appointed for the reedifying of the Castle upon theire motion to this Court are Empoured to allow of some meete person to sell beere upon Castle Island, taking caution according to law.

COUCHES discharge

Vpon due proclamacion made D<sup>r</sup> Robert Couch was discharged from his bonds of good behavio<sup>r</sup>

HOLLIDAYES discharge

Vpon due proclamacion made Anne Holliday was discharged from her bonds of good behavio<sup>r</sup>

Order about BERNARDS Estate

The Court Orders & Empoures the former Committee appointed by this Court to receive the claimes of the Credito<sup>rs</sup> to the Estate of the late m<sup>r</sup> Sam: Bernard deceased viz<sup>t</sup> Cap<sup>t</sup> William Davis & Capt Edward Hutchinson as a Committee to proporcion the s<sup>d</sup> Estate to the severall Credito<sup>rs</sup>

CHAMBERLIN'S Fine respited.

Vpon the Petition of John Chamberlin of Hull: The Court respites the fine imposed on him by this Court at theire first Session till

the Court shall take farther Order & at present discharge him of his imprisonment.

#### GAY's Administr<sup>a</sup>

John Sweete & Edward Drinker personally appearing in Court did resigne & give up theire power of Administration to the Estate of the late Elisabeth Martin deceased & the Court grants administration thereof to John Gay and Sammuell Gay of Dedham the other administrators haveing formerly brought in an Inventory of s<sup>d</sup> Estate & rendred an Acco<sup>t</sup> to the present administrators<sup>rs</sup>

#### ADDINGTONS discharge

The Court Orders Isaac Addington to resigne up the place of Clarke of the County Court of Suffolke with the Records & papers thereunto belonging to m<sup>r</sup> FreeGrace Bendall who is hereby restored to that place

#### Freemen Sworne

m<sup>r</sup> Christopher Clarke, John Faireweather John Anderson Richard Bennett Daniell Travis Edward Willis Francis Hudson William Greenough Joseph Cock Lionell Wheatly John Wally Nathaniell Davenport, Isaac Addington Hopestill Foster Matthew Bernard John Woodmancy Timothy Batt John Osborn all of Boston tooke the Oath of Freedom of this Colony. [ 140 ]

#### JONES's Licence & bond

On certificate from the Select men of Boston m<sup>rs</sup> Dorothy Jones as an addicion to her Coffee house had Licence granted her to sell wine by retail for the yeare Ensuing & Morgan Joanes her husband as principall in 10<sup>li</sup> & m<sup>r</sup> Peter Lidgett & m<sup>r</sup> Samm: Shrimpton as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Jones shall observe the laws title jnkeepers &<sup>a</sup>

#### KEYN's Licence & bond.

On like certificate John Keyne had his licence renewed for the yeare ensuing to keepe a Cookes shop & as an addicion to sell strong beere



with his victualls & the s<sup>d</sup> John Keyne as principall in 10<sup>li</sup> & William Kent & Francis Morse as Sureties in 5<sup>li</sup> apiece acknowledged themselves bound as aboue.

This Court was dissolved.

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29. July. 73.

EVERILL to BLACKLEADGE

James Everell appeared before John Leuerett Esq<sup>r</sup> Gov<sup>r</sup> & Edward Tyng Esq<sup>r</sup> & acknowledged a judgment against himselfe & Estate for one hundred twenty three pounds seventeen shillings seven pence mony unto John Blackledge Jun<sup>r</sup> as Attests FreeGrace Bendall Cler.

John Blackledge personally appeared in the Office & acknowledge that hee had received full Satisfaction for the aboue-written judgm<sup>t</sup> done 7<sup>br</sup> 29: 1674

as Attests Is<sup>a</sup> Addington Cler.

## At a County Court held at Boston

July: 29<sup>th</sup> 1673

Present

JN<sup>o</sup> LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>SIMON BRADSTREET Esq<sup>r</sup>EDW: TYNG Esq<sup>r</sup>W<sup>m</sup> STOUGHTON Esq<sup>r</sup>

## Grand Jurie Sworn

L<sup>t</sup> John Smith

Nath: Adams

John Harrison

John Miriam

John Blake

John Bowles

Edw: Bridge

Augustin Clements

Sam: Bass

Joshua Beales

John Loring

Peter Woodward

Nath: Whiting

Tim<sup>o</sup> Doyl

Thomas Tolman

Rob<sup>t</sup> Voss

## Jurie of Tryalls Sworn

m<sup>r</sup> Nath: Burrows

Tho: Sanford

Jon<sup>a</sup> Gatliffe

Ri: Meads

Tim<sup>o</sup> Tilestone

William Daniell

Jacob Nash

Joseph Church

Benj<sup>a</sup> LincolneJn<sup>o</sup> Benson

Sam: Mills

Jn<sup>o</sup> Plimpton

## [HOLBROOKE v. HOLBROOKE]

John Holbrooke, plaint. against Daniell Holbrooke Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated. 27: 4: 73. the plaint. nonsuited upon non appearance.

## [ROSE v. YOUNG]

Josias Rose plaint. against John Young Defend<sup>t</sup> in an accion of the case for refusing to pay him his wages due to him for four months & four dayes service, being Shipped by him in Boston in the Catch Abigail the 21<sup>th</sup> day of February. in the yeare 1671. in a voiadge to goe to French Tertudos & soe to Jamaica & soe to any port in the Indies except the bay of Campechy & soe to Boston againe; in whose service the s<sup>d</sup> Rose was [ 141 ] before his return to Boston from the twenty first day of February to the 27<sup>th</sup> day of June, for the which service hee was to pay the s<sup>d</sup> Rose fifty. 5. shillings per month in silver till his arrivall at Boston which is eleven pounds or thereabouts being greatly to the damage of the plaint. & all other due damages according to Attachm<sup>t</sup> Dated July. 5<sup>th</sup> 1673. . . . The Jury . . . found for the Defend<sup>t</sup> costs of Court.<sup>1</sup>

<sup>1</sup> The case of Hawkins v. Sheafe, which should follow at this point, will be found on p. 1171, below.

BILL cont<sup>a</sup> WAYTE

John Wally & Jacob Jesson or either of them Attournies to Francis Bill plaint. against Richard Wayte Marshall in an action of the case for that the s<sup>d</sup> Richard Wayte did unjustly take away from on board the Catch John & Jacob John Wally Ma<sup>r</sup> a parcell of wrought Leather of the s<sup>d</sup> Bills & doth still detain the same to the s<sup>d</sup> Bills damage about fifty pounds in mony with all other due damages according to an Attachm<sup>t</sup> Dated July: 15<sup>th</sup> 1673. . . . The jury . . . founde for the Defend<sup>t</sup> costs of Court.

HUTCHINSON ags<sup>t</sup> BLAKE

Cap<sup>t</sup> Edward Hutchinson plaint. upon a Replevin Dat: 16. may. 73. against John Blake Defend<sup>t</sup> After the Replevin & Evidences in the case produced were read committed to the Jury & remaine on file with the Records of this Court. The Jury brought in a Special Verdict — i. e. if actionable in this Court they finde for the Defend<sup>t</sup> costs of Court: The Magistrates declare it actionable [142] The plaint. appealed from the judgment of this Court to the next Court of Assistants & the s<sup>d</sup> Cap<sup>t</sup> Edward Hutchinson as principall in 5<sup>li</sup> & m<sup>r</sup> Anthony Stoddard & m<sup>r</sup> FreeGrace Bendall as Sureties in 50<sup>s</sup> apeice acknowledged themselves respectively bound to . . . prosecute his Appeale . . .

[ This is another case growing out of the will of Governor Bellingham, as the following bit of evidence (S. F. 1225.7) indicates:

Peter Lorphlyn and James Penniman Testifie that vpon the last day of December last past, being requ<sup>e</sup>st<sup>l</sup>ed by Richard Wharton, went with him into a peece of pasture ground lyeing behind y<sup>e</sup> depon<sup>ts</sup> Pennimans house & Lane, in Boston, on the North side of the way to Roxbury, And then w<sup>th</sup> the said Wharton and m<sup>r</sup> John Blake went peaceably without any opposition into the said pasture, by the gate way, and there, vpon the said pasture, the said Wharton gaue possession thereof to m<sup>r</sup> John Blake in the name and for the vse of Doctor Samuell Bellingham, as heyre to the late Deceased Governor, & y<sup>t</sup> the said Wharton left the said Blake in possession, and that the said Wharton and Blake requested y<sup>e</sup> deponant Penniman to nayle vp the gate, and he the deponent Penniman saith, that accordingly he did nayle vp the gate, and further they say not.

Sworne in Court 3 June 1673 as attest

Robert Howard Cleric Cur Commiss

. . . true Coppy . . . Robert Howard Cleric Cur Commiss

Another action arising from the same set of circumstances had been heard at a Commissioner's Court on 3 June 1673 (S. F. 1225.1):

Captaine Edward Hutchinson plaintife against John Blake vpon a replevin of one bay horse of said captaine Edward Hutchinsons Impounded per said Blake &c. M<sup>r</sup> Anthony Stoddard declared in said Court, That m<sup>r</sup> John Oxenbridge, m<sup>r</sup> James Allen, with him the said Stoddard, did let vnto said Captayne Edward Hutchinson as tenant for one yeare, The pasture which was the late gou<sup>r</sup>nors neere the neck in Boston, And that he the said Stoddard gaue the said Hutchinson possession thereof, with the consent of the said Oxenbridge and Allen, who both appeared in said Court, and declared to the truth aforesaid. Which said Replevin and all other writings and evidences in the case being red & duely considered by the Court, the said Court found for the plaintife Cost of Court fourteene shillings eight pence money.

The said John Blake Appealed from the Judgm<sup>t</sup> of said Comissioners Court to the Court of Assistance, And he the said John Blake with Richard Wharton his suerty, binds themselves Joyntly and severally in the summe of five pounds vnto the Tresurer of this County and parties therein concerned, That he said John Blake, shall and will prosecute this his Appeale to effect.

. . . true Coppy . . . Robert Howard cleric cur comiss

The Reasons of Appeal from the judgments of the Commissioners' Court and the County Court, by Blake and Hutchinson respectively, follow:

S. F. 1225.9

John Blake his Reasons of Appeal from a judgement obtayned against him by Cap<sup>t</sup> Edward Hutchinson at a Commissioners Court at Boston held 3<sup>d</sup> June 1673

1. The trespass, the Impounding, & Repleving, did arise & were to be Determined vpon a Claime or pretence of title which the then Plaintiff made to Land Jn possession of the Appellant vallued by the Said Hutchinson at two hundred & fifty pounds, the action was not tryable at that Court their power being not higher then for ten pounds

2 For that the persons from whom Cap<sup>t</sup> Hutchinson pretends to Deriue his title never had any themselues, the will by him produced making noe mention of any Land with which they are to Intermeddle But that at winnysymett, as Jn another Case is since Determined by the County Court.

3 For that M<sup>r</sup> Stoddard alone, pretending the Consent of m<sup>r</sup> Oxenbridge & m<sup>r</sup> Allen as the testimony declares, gave possession to Cap<sup>t</sup> Hutchinson whereas the paper Called a will saith there must be the Consent of three to make a vallid act, But the Consent of Cap<sup>t</sup> Hutchinson's other two Land Lords appears by nothing but by m<sup>r</sup> stoddards words till they Came to Court which was about two moneths after possession was given and 14 dayes after the Replevin was executed.

4 That the Appellant had Peacable possession at least three monthes before Cap<sup>t</sup> Hutchinson & Law & Reason Jnform that Possession is a good title till a better [be] proved

5 Where There is noe Damage there Lyes noe action But noe Damage appears to be Done to Cap<sup>t</sup> Hutchinson therefore none is granted him Notwithstanding



the Appellant is Condemned to pay Cost of Court by which It is humbly presumed that it will appeare that the action was vnjust & the Judgement Erronious  
Per me John Blake

delivered vnto the clarke of the comissioners Court the 27<sup>th</sup> day of August in the afterpart of said day before sonne sett. as attest Robert Howard Cleric Cur Comiss

S. F. 1225.10

Edward Hutchinson his Reasons of Appeale from y<sup>e</sup> County Courts Judgem<sup>t</sup> in July last in a caise of Replevin betwixt Edward Hutchinson & John Blake

First J apprehend y<sup>e</sup> Jury mistooke in y<sup>r</sup> verdict, for a spetial verdict by law is if y<sup>e</sup> law be in such a point we finde for y<sup>e</sup> pl. if y<sup>e</sup> law be otherwise we finde for y<sup>e</sup> def<sup>t</sup> but in this verdict be y<sup>e</sup> law what it will they finde for y<sup>e</sup> def<sup>t</sup>

2<sup>ly</sup> y<sup>e</sup> Jury as J app<sup>r</sup>hend in this mistooke also, for Ed: Hutchinson is but constrained pl, for m<sup>r</sup> Blake first impounded my horse, & J forced to Replevin him, so he is y<sup>e</sup> original pl. & J y<sup>e</sup> proper def<sup>t</sup> & according to law was forced to giue in ten pounds bond to answer his damage, w<sup>ch</sup> is found none by y<sup>e</sup> Jury, & how they could finde then for him & giue no damage J do not vnderstand, & therefore J humbly conceiue they gaue noe verdict in y<sup>e</sup> caise, or at best a mistaken verdict.

2<sup>ly</sup> The Jury owned in open Court m<sup>r</sup> Wharton had no right to lease out y<sup>e</sup> land y<sup>t</sup> was y<sup>e</sup> late Gou<sup>r</sup> Belinghams, vnder p<sup>r</sup>tens of his letter of Attorney from doc<sup>t</sup> Belingham, & y<sup>r</sup>fore m<sup>r</sup> Blaike could not haue more right then m<sup>r</sup> wharton could giue him, w<sup>ch</sup> was none at all, by y<sup>e</sup> Jurys Judgem<sup>t</sup> & therefore he vniustly impounded my horse, & my replevin iust.

3<sup>ly</sup> for y<sup>e</sup> land in controuersy Gou<sup>r</sup> Belingham dyed possest of it, his Executors & Trustees haueing proued y<sup>e</sup> will, & giuen an Jnuentory into y<sup>e</sup> Court vpon oath of y<sup>e</sup> estaite, where of this land is part, & therefore of necessity it must needs nextly fall into there possetion, & desposall to lett out.

4<sup>ly</sup> Doct Belingham himselfe (much lesse an Attorney, & farr lesse any p<sup>r</sup>-tended Attorneyship as to y<sup>t</sup> perteculer, or any by or vnder him) can not haue any thing of that Estaite till there be an orderly demand of y<sup>e</sup> Executors & a legall recouery, w<sup>ch</sup> was neuer donne, & therefore my right good.

5<sup>ly</sup> if it should be Judged legall w<sup>ch</sup> J conceaue can not be, y<sup>t</sup> any vpon pretens may come & take possetion of an others land & lease it out, & y<sup>t</sup> lease be good while eiected by law, then no man is suer of what he hath, but may be molested in his iust right w<sup>th</sup> out any culler of law (as J am in this caise) Esspetially considering m<sup>r</sup> Wharton gaue y<sup>t</sup> his Jllegal possetion to m<sup>r</sup> Blake in y<sup>e</sup> winter, when no man had ocaation to looke after such paster land, neither did he it by any corse of law, nor y<sup>e</sup> Executors who was possest of it not being informed of it by him or any in his behalfe.

6<sup>ly</sup> My goods being impounded J was forced to replevie, & so to proseed by way of Ciuill Action, yet vnder correction, J humbly conceaue it also Criminall, & therefore craue y<sup>e</sup> Courts serious consideration.

Edward Hutchinson

These Reasons were received August 27<sup>th</sup> 1673

per Jsaac Addington Cler

[Endorsed:]

Capt<sup>a</sup> Hutchinsons Reasons of Appeale w<sup>ch</sup> was not deliuv'd into y<sup>e</sup> Court by m<sup>r</sup> Addington. thò when y<sup>e</sup> action was Called he affirmd publickly & made it a [Contest y<sup>t</sup>] he tend<sup>rd</sup> his oath y<sup>t</sup> he had so donn: that J was forc<sup>t</sup> to make vse of m<sup>r</sup> whartons Copie vnd<sup>r</sup>taking to Give him another. Refusing such was his Confidenc to look for y<sup>em</sup> yet afterw<sup>ds</sup> y<sup>e</sup> next day brought them to me & acknowledged he had mislayd them.  
as Attests E. R. S.

S. F. 1225.13

Edw: Hutchinson bill cost in the Action of Repleuen ag<sup>t</sup> Jn<sup>o</sup> Blake

	<i>l s d</i>
paid by poundage . . . . .	00:00:04
paid the Clarke for the Replevin . . . . .	00:00:06
paid serveing and bond . . . . .	00:01:04
Copie of the Go <sup>rs</sup> Bellinghams will . . . . .	00:02:00
Summons for witnesses . . . . .	00:00:02
3 witnesses one day . . . . .	00:04:06
my owne Attendance . . . . .	00:01:06
entering the action . . . . .	00:03:04
filing papers . . . . .	00:01:00
	<hr/> 00:14:08

Allowed per Cur 3 June 1673 attest Robert Howard Cleric

There is no record of a hearing on this case by the Court of Assistants.]

KNIGHT ags<sup>t</sup> MOULDR<sup>r</sup>

Richard Knight Collecto<sup>r</sup> of the imposts of wine & strong Liquo<sup>rs</sup> in behalfe of this Colony plaint. against Nicholas Moulder Defend<sup>t</sup> in an action of the case for withholding a debt of twelue pounds or thereabout due from the s<sup>d</sup> Moulder for the custom of a parcell of Rumm w<sup>ch</sup> hee concealed on board the Ship Paradox Bartholmew Stratton Command<sup>r</sup> & privately landed without entring or paying custom for the same according to law with other due dammages according to Attachm<sup>t</sup> Dated July 14<sup>th</sup> 1673. . . . The Jury founde for the Defend<sup>t</sup> costs of Court.

WAY ags<sup>t</sup> GOARE

L<sup>t</sup> Richard Way plaint. against Richard Gore Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: May. 23<sup>th</sup> 1673. The Accion was tried this Court but the Defend<sup>t</sup> being out of this Jurisdiction The judgm<sup>t</sup> is not to bee entred till next Court according to law.

CARTER ags<sup>t</sup> RISCO:

Ralph Carter Attourney of Edward Cox plaint. against Robert Risco Defend<sup>t</sup> in an accion of the case for not paying the summe of five pounds or thereabouts in mony or soe much as shall appeare to bee due from the s<sup>d</sup> Risco to the s<sup>d</sup> Cox for service done by s<sup>d</sup> Cox to s<sup>d</sup> Risco in the employ of a Seaman on board the Brigantine called the good hope of Albemarle by the space of three months or thereabouts begining in Jan<sup>ry</sup> 167 $\frac{7}{8}$ . & ending in the month of Aprill. 1673. being shipped by s<sup>d</sup> Risco to doe the worke of a Seaman aboard the s<sup>d</sup> Brigantine in a Voiadge from albemarl in Caroline & soe for England or Ireland but the Voiadge is deserted to the great damage of the plaint. & all due damages according to Attachm<sup>t</sup> Dat. July: 21<sup>th</sup> 1673. the s<sup>d</sup> Carter haveing at the tryall of the accion obliged himselfe to stand to & abide the judgment of the Court as Attourney aforesaide. [143] . . . The jury . . . founde for the Defend<sup>t</sup> costs of Court being eight shillings & ten pence

Execucion issued 6 August 1673 for 8<sup>s</sup> 10<sup>d</sup>

GROSS ags<sup>t</sup> PEARSE

Clemont Gross, plaint. against Nathaniell Pearse Defend<sup>t</sup> in an accion of trespass for comming upon the land of the s<sup>d</sup> Gross & pulling up of a post & breaking up a Fence from the land of the s<sup>d</sup> Gross, being legally forewarned of doing the same & for molesting the s<sup>d</sup> Gross in the Emproveing of his land being greatly to the damage of the plaintiffe w<sup>ch</sup> will more fully appeare & all other due damages according to Attachm<sup>t</sup> Dated. July: 21: 1673. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

HAWKINS ags<sup>t</sup> SHEAFE

Thomas Hawkins plain<sup>t</sup> against Sampson Sheafe Defend<sup>t</sup> in an accion of the case for unjustly selling & disposing of severall parcells of goods of his to the vallue of twenty pounds & upwards in mony as will farther appeare by the Account of the s<sup>d</sup> goods being greatly to the damage of the plain<sup>t</sup> & all other due damages according to Attachm<sup>t</sup> Dated June 19<sup>th</sup> 1673 . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court. the plaint appealed from the judgm<sup>t</sup> of this Court to the next Court of Assistants & the s<sup>d</sup> Tho: Hawkins

as principall in 5<sup>li</sup> & Dan: Turill sen<sup>r</sup> & John Williams as Sureties in 50<sup>s</sup> apeice acknowledged themselves respectiuey bound to . . . prosecute his appeale. . . .

[ This action grew out of a mortgage foreclosure in 1671: see Sheafe v. Hawkins, above, pp. 1-3. A copy of the attachment, return, and bond is in S. F. 1458.1. The articles mentioned below were brewing vessels.

S. F. 1458.7

M<sup>r</sup> Sampson Sheafe Owned in Court that hee had Sold all that by the Mortgage hee had of Thomas Hawkins: & William Stoughton Esq<sup>r</sup> Owned that if the abouesaide things (which are some appurtenances to the brewhouse) were m<sup>r</sup> Sheafes hee then bought them. this done & testified y<sup>e</sup> 29<sup>th</sup> of: 5<sup>mo</sup> 1673

as Attests Free Grace Bendall Cler

. . . true Coppie . . . Jsaac Addington Cler

S. F. 1458.14

An Acco<sup>nt</sup> of Goods sold by m<sup>r</sup> Sampson Sheafe to W<sup>m</sup> Stoughton Esq<sup>r</sup> of Thomas Hawkins apprized by us underwritten.

	<i>li</i>	<i>s</i>	<i>d</i>
Jnp <sup>rs</sup> A Meash Fat & under fat . . . . .	08	00	00
Two Coolers . . . . .	03	10	00
One Gile fat . . . . .	02	00	00
One Cooler . . . . .	01	00	00
	14	10	00

the M marke of  
John Mirick

Witness.

John I A Andrews  
his marke

Ambros Dawes

An Acco<sup>nt</sup> of Goods belonging to Tho: Hawkins disposed of by m<sup>r</sup> Sampson Sheafe.

	<i>li</i>	<i>s</i>	<i>d</i>
Jnp <sup>rs</sup> For. 45 Foote of pump at 18 <sup>d</sup> per Foot which comes to . . . . .	03	07	06
and for a pump speere & bracke & bolts . . . . .	00	12	00
For a Signe . . . . .	01	10	00
For 3. stooles and 1 ladder to goe up to y <sup>e</sup> keefs . . . . .	00	10	00
	05	19	06
	14	10	00
	20	09	06

prized by mee concerning the pumps & what J know.

David Adams

John Mirick & John Andrews made Oath in Court that they made the aboue-  
saide Vessels for Tho: Hawkins & that this is the true vallue of them

Sworn in Court y<sup>e</sup> 29<sup>th</sup> 5<sup>mo</sup> 1673

as Attests F. B. C

. . . true Coppie . . . Jsaac Addington



Hawkins' Reasons of Appeal are in S. F. 1458.8. The record of the appeal has not been found. See *Hawkins v. Sheafe*, below, p. 416.]

### HARRIS ags<sup>t</sup> BRIDGEHAM

Thomas Harris plaint. against Jonath<sup>a</sup> Bridgeham Defend<sup>t</sup> in an accion of the case to the vallue of twenty pounds or thereabouts for that the dog or dogs of the s<sup>d</sup> Bridgeham did worrey & spoil thirty eight sheepe or thereabouts of the s<sup>d</sup> Harrisses after warning given the s<sup>d</sup> Bridgeham to keepe up his dog or dogs the dog or dogs haveing killed one sheepe before warning given to the s<sup>d</sup> Bridgeham & other due damages according to Attachm<sup>t</sup> Dat: July 17<sup>th</sup> 1673. . . . the jury . . . founde for y<sup>e</sup> Defend<sup>t</sup> costs of Court. [144]

### MILLER ags<sup>t</sup> RISCO

Thomas Miller, plaint. against Robert Risco Defend<sup>t</sup> in an accion of the case for breach of Covenants to the plaint<sup>s</sup> great damage & other due damages according to Attachm<sup>t</sup> Dat. June 12<sup>th</sup> 1673. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court. the plaint. appealed from the judgment of this Court to the next Court of Assistants & the saide Thomas Miller as principall in 100<sup>li</sup> & Ralph Carter & John Williams as Sureties in 50<sup>li</sup> apeice acknowledged themselves respectively bound to . . . prosecute his appeale . . .

[ Here begins the tale of another unhappy voyage, in the little brigantine Good Hope "of Carolina in the County of Albemarle," N. C., Robert Risco master, bound from "New-Bean [Newbern?] Creek in Pasquotanck riuer" (S. F. 1245.10), to Fowey, England, with "Nyne Tunnes being Thirty Sixe hogsheads of tobacco." The tale is best told in the documents which have been preserved. First, the charter-party (S. F. 1245.7):

Js the name of God Amen This Charter party of Afreightm<sup>t</sup> Idented made and agreed vpon the first day of March Ann<sup>o</sup> Dm<sup>a</sup> 167<sup>3</sup> Between Robert Risco marin<sup>r</sup> and part owner of the good Brigantine called the good Hope of Albemarle in the Province of Carolina of the portage or Burthen of tenne Tunnes or thereabouts nowe riding at Ancor in Pasqottancke river in the County aforesaid and master vnder god for this present voyage Bound fortwith for England or Ireland of the one part An<sup>d</sup> m<sup>r</sup> Thomas Miller of Balley Samson in the County of Waxford in Ireland Apothecary of the other part Witnesseth that the aforesaid Robert Riskoe master for and in the Behalfe of himselfe and Noah Parker part owner of the aforesaid good Brigantine hath granted and let to freight vnto the said

m<sup>r</sup> Thomas Miller Nine Tunnes of tobacco for which the Said Miller is to pay to the said Riskoe master and Company Nine pounds Sterling for every Tunne (being foure hogsheads of tobbaeco Soe shipped by him: Only the said Miller is to haue his passage one Chest one barrell and his Cabbin with good accomodations freight free And further it is agreed Between each parties that the said Miller shall haue the liberty besides his poart nominated in his Bills of Loading to Saile to any other Port for the discharging his tobaccoes soe freighted on board the said Brigantine Either in England or Jreland Provided that there bee noe more then five working Dayes space Between the arrivall at the first and the Setting Saile to y<sup>e</sup> Second the winds and weather being faire And noe Jmbargo of Province to hinder the same: And likewise it is Agreed that the said Risiko (if required by the aforesaid Miller shall Stay any longer then the aforesaid Five Dayes in the first Port with an Jntent to Saile to the Second (the aforesaid hindrances being Considered that then the aforesaid Miller shall pay vnto the aforesaid Riskoe & Company vpon the Accompt of Demurrage for every Day that they shall attend through his occasion tenne shillings Per Day. Likewise it is agreed on that if the first Port bee in England the Second shalbee there likewise And soe in Jreland if it shalbee lawfull And to the true performance of the abovesaid Charter partie wee the abovesaid parties haue Enterchangeably Sett our hands and Seales the Day and yeere abovewritten

Robert Risko and a Seale

Signed Sealed and Deliuered

in the presence of vs

John Nixon

Vatt: Bird

Owned in Court by the

Defend<sup>t</sup> 30.5.73 as

attests F B C:

. . . true copie . . . Jsaac Addington Cler

The story of the voyage is told in Thomas Miller's petition for a survey (S. F. 1245.2), and in a deposition of Edward Cox, one of the crew (S. F. 1245.22), which merely repeats the facts in the Master's Instrument of Protest, recorded at Newport, R. I. (S. F. 1245.6):

By this publike Jnstrument of Protest, Bee it Knowne & manifest to all whom it may concerne Whereas Robert Risco in the County of Albemarle in the province of Carolina master of the vessell called the good hope of the abovesaid County by gods grace being intended or bound for Foy in old England and in pursuance thereof & with an hearty Jntention to performe the said voyage on the 20<sup>th</sup> day of March 167 $\frac{2}{3}$  from Pascotancke Riuer set saile & on the 22<sup>th</sup> of March aforsd wee came before the New Jnlet w<sup>ch</sup> seemed to bee quite barred vp for wee Stood for the Middle thereof till wee came on ground. It pleased God the tide of Flood fauouring of vs wee got her off againe & stood further to the Southward till shee came on ground the Second time Then wee carried out ou<sup>r</sup> Ancor and by the help of god gott her off againe then wee stood almost to the Southside of the Jnlet till wee found but Fiue foote water and before wee were about, wee were on ground the third time But not soe fast but that wee got off with little trouble soe being quite discouraged and quite out of hope of finding any channell that way wee stood quite ouer to the Northside where wee found Eight foote water but it showing soe suddenly y<sup>t</sup> before wee could get the vessell about wee were fast on ground againe notwithstanding all our endeauo<sup>s</sup> with Ancor &

Cables and all the meanes wee could vse shee cast thwart & Jmediatly there arose a violent Storme or tempest of wind at Southwest or thereabout which caused the Sea to breake sheer over her & she beating soe violently that wee much feared shee would split in peeces The time y<sup>t</sup> shee lay in this Condition was from Nyne a Clocke in the morning till about fieve in the afternoone & the Strength of the tide with the motion of the vessell with the Sea had wrought away y<sup>e</sup> sand afore and abaft and banked vpon the lee-side in the middle almost to the Bend which wee feared would haue broke her backe But wee tryed the pump often but could not find her to complaine as yet But when it was almost night with great labour & paines & with the help of the flood wee got her off In which time wee receiued three or foure Extraordinary knockes. But in the End wee being almost tyred and Desiring to take o<sup>r</sup> rest wee went first to try the pump by w<sup>ch</sup> wee found a great deale of water & that o<sup>r</sup> vessell had receiued some harme by beating in which Condition of leakines Shee hath ever since Continued for which cause the afores<sup>d</sup> master did resolue to put into some part or place in New England. Wherefore knowe yee therefore that J the said Risko doth Solemnly protest against the Showles Tempest and Sea which wee met with Coming out of the Said Inlet against all Dammages that wee haue Sustained.

This abovewritten Instrument of protest was by the aforesaid master and two of his men viz<sup>t</sup> Edmund Cocks & Noah Parker published & Declared before mee: The truth of what is above declared J attest to bee from them declared vnto mee Witnes my hand this 17<sup>th</sup> day of Aprill 1673

John Sanford Record<sup>r</sup> of his  
Ma<sup>t</sup>s Colony of Rhoad  
Jsland & Providence  
plantations

Appeared before mee Robert Risco Edmund Cocks & Noah parker the day & yeere above written & tooke their Solemne Engagm<sup>ts</sup> that the above written Instrument is the truth and nothing but the truth & that as yet they haue not broke Bulk

Francis Brinly Assist<sup>nt</sup>

. . . true Coppie . . . Jsaac Addington Cler

S. F. 1245.2

To the hon<sup>d</sup> the Gouvern<sup>r</sup> Deputy Gou<sup>r</sup>no<sup>r</sup> & the rest of the Magistrates of his Ma<sup>ty</sup>s Colony of Road Jland & Providence plantations & Jnhabiting in the Towne of Newport on Road Jland Apr: 17<sup>th</sup> 1673. The humble Peticion of Thomas Miller

Sheweth That whereas yo<sup>r</sup> peticon<sup>r</sup> is by providence arrived in this port in a Small Brigantine bound by Charterparty Either for England or Ireland which vessell yo<sup>r</sup> peticon<sup>r</sup> conceiues is altogether in Sufficent to performe sd voyage & therefore may in the Conclusion prove very preiudiciall to him both in his person and Estate.

His request therefore is y<sup>t</sup> you will bee pleased to afford y<sup>t</sup> lawfull & Just favou<sup>r</sup> to him a Stranger to Comand a stop of sd vessell vntill some skilfull persons haue taken a Survey thereof & made a Returne of their Judgm<sup>ts</sup> therein vnder their hands vnto yo<sup>r</sup> worships & it will very much oblige

Yo<sup>r</sup> peticon<sup>r</sup> & Supplicant  
Thomas Miller

To James Rogers Generall Sergeant . . .

Thou art hereby required to require Henry Beare George Joye & John Hickes to view the said vessell & to giue their Judgm<sup>ts</sup> whether the said vessell bee sufficient to performe the Service promised and returne what they affirme, they Judge in the Case. Dated the 17<sup>th</sup> Apr: 1673

Nich Easton Gou<sup>r</sup>

. . . true Coppie . . . Jsaac Addington Cler

On the reverse side is an instruction by the Deputy Governor of Rhode Island to James Rogers to command a stay of the vessel till further order and require the master to attend ashore. James Rogers deposes that he did so on May 3, 1673 (S. F. 1245.15), securing the sails and anchors on shore.

S. F. 1245.9

Wee whose names are here vnderwritten being by authority ordered to Survey the good hope Brigantine Robert Risco master belonging to the Colony of Carolina and Bound for England and forthwith to giue in o<sup>r</sup> Judgm<sup>ts</sup> of her ability for the said voyage Therfore in obedience to yo<sup>r</sup> hon<sup>rs</sup> Comands wee haue been on board the said vessell & being vncapable of viewing the hold of her shее being laden with goods Cannot say anything to it But her vpp<sup>r</sup> worke & Riggins wee find Defectiue w<sup>ch</sup> makes her if not repaired vncapable to performe a voyage soe long and full of Difficulty:

The Master of s<sup>d</sup> vessell informed vs that Coming over the Barr at the Inlet of Carolina the vessell grounded and beat much vpon that Showld since which shее hath been leaky Therfore Doubting her Bottom may bee p<sup>r</sup>iudiced our Judgm<sup>t</sup> is there may bee a Carfull view taken thereof and what is amiss to bee amended

John Hickes  
Henry Beere  
George Joye  
Abiah Edwards

Abiah Edwards aged two & twenty yeeres or thereabouts testifieth y<sup>t</sup> hee was one of the persons who viewed the vessell above & set his hand to this Returne & see it signed by the other persons this 30<sup>th</sup> 4<sup>mo</sup> 1673 Taken before mee Walter Clarke assistant

. . . true coppie. . . Jsaac Addington Cler

After this exchange of pleasantries, Thomas Miller employed Nicholas Stevens of Newport, c. May 20 "to Rowle his tobacco to Caleb Carres warehouse" (S. F. 1245.14), which brought on a dispute between him and Risco over the freight money. There are several depositions about what Miller got ashore from the Good Hope, and to the effect that he and the Captain came to an agreement about the freight, in S. F. 1245.16-20; a copy of the alleged agreement is in S. F. 26662, from which it appears that Miller owed freight on 36 hhd. tobacco at 22s per hhd., to be paid in tobacco at the rate of 2d per lb. This worked out at 4752 lb. tobacco



for the whole freight bill. In order to discharge this, Miller left with Captain Risco 12 hhd., weighing 4524 lb. net, allowing 75 lb. tare on each hogshead; and still owed 228 lb. tobacco.

James Rogers, the General Sergeant, deposes in part (S. F. 1245.15):

. . . After which time aforementioned the sd Risko did procure a writ to attach the Body of the s<sup>d</sup> Miller, the w<sup>ch</sup> writ J the sd Sergeant did serve on the Body of the sd Miller for Security which was according to the writ Suddenly after which time the said Miller did himselfe or his order deliuer the Sailes by mee before secured as above to the master of the afore mentioned Brigantine without my knowledge till after it was done which was contrary to the teno<sup>r</sup> of the writ and suddenly after the said Miller did depart this province without any knowledge of mine and without giuing mee Security according to law hee the said Miller being vnder an arrest and is not as yet Released from the said arrest And alsoe J the sd Serg<sup>t</sup> doe here declare y<sup>t</sup> after y<sup>e</sup> said Miller or order did deliuer the Sailes of the aforsd vessell & alsoe himselfe departed out of this province J the sd Serg<sup>t</sup> did noe longer take charge of Sd vessell nor forbid or hinder the sd vessell nor master from Departing. . . .

Depart he did; and Miller took the tobacco he had "rowled ashore" to Boston on a sloop, Derrick Smith master, as John Trengo deposes July 30, 1673 (S. F. 1245.21). We next hear of the Good Hope at York, Maine, where an attachment was served, and the following inventory was taken of her goods by "Abra: Preble Constable of Yorke," June 20, 1673 (S. F. 1245.12):

Jnpr<sup>s</sup> 7 Hodged of Toba: marked as Jn y<sup>e</sup> Margent, & Numbered . . .

Jtt: one parcell of bulke Tobba:

It six empty barrells, 6 barrells of Gumes, & a parcell of trunnells, One Iron

Pott, 1 brasse kettle, & some ould Pewter,

It one mayne sayle, fore sayle & stay sayle being ould,

It one Cable & anker, the Cable ould

It one buckett, & more 5 barralls empty

It one chest with bread & Cloaths in it,

It one small Caske of Beuerice, with other small dishes & one [quaderine]

It some Candles about 10 Pound, It ocum & some yearne, It pumpe Leather

It some brass things, one Hammer blocke & dead eyes,

It 1 barrell of bread one Roape, 1 Hatchett one Compass marling speeke & pumpe bowlts, & Calking Irons, one Crow of Iron

It one pumpe hooke, & her Riging

Of course this meant more "Disbustments" (S. F. 1208):

A True acc<sup>ot</sup> of Charges & Disbustmens<sup>t</sup>, vpon the brickiteen Called y<sup>e</sup> good hope of Albemare. Now in Yorke. Augus: 1673

	l s d
In primo; for serveing the warrant and Summons . . . . .	0-04-00
For assisting y <sup>e</sup> Cunstable . . . . .	0-09-00
Jtt for 10 day <sup>s</sup> time. lookeing to y <sup>e</sup> versell: while y <sup>e</sup> goods ware one bord . . . . .	1-00-00

	<i>l s d</i>
Jtt for two men two days packing the Bulk tobacho, & securing of itt	0-08-00
Jtt for 4 hh . . . . .	0-16-00
Jtt for the Cunstable severall attendance. in lookeing after the versell	0-12-00
Expenses of the whole for drinke for the people . . . . .	0-08-09
For the Carter in drawing the tobacho to the store house . . . .	0-05-00
For store house rume for the good <sup>s</sup> for y <sup>e</sup> security thereof. . . .	0-08-00
	<u>4-10-09</u>

This is the True acc<sup>ott</sup> of the disbustments as attests; Abra: Preble

Constable

[ *Marginal note :* ]

To a Man for fetching this Accompt of Charges from Yorke — 20ss 4:01:09  
 01:00:00  
 5:01:09

It is not clear why the action was brought in Suffolk County. See the entry above, for the verdict. Miller's Reasons of Appeal follow (S. F. 1245.5):

Thomas Miller his Reasons of Appeale from the Judgment of the last County Court held at Boston July 29<sup>th</sup> 1673 in the case wherein hee was plaint. against Robert Risco Defend<sup>t</sup>

Jmp<sup>r</sup> Whereas the plaint. did arrest the Defend<sup>t</sup> for breach of severall Covenants bills of lading Charterparty &<sup>a</sup> which as the plaint. humbly conceives depends one upon another for all relate to one & the same thing & the same voiadge & never altered by the plaint. but were refused to bee performed by the Defend<sup>t</sup> as plainly appeares by the Defend<sup>t</sup> forcing the plaint. contrary to his will & designe into severall strange places viz<sup>t</sup> Sandyhooke neere New York & from thence to Newport on Rode Jsland; there fallatiously protesting against the damage of the Shoales incapacitating their vessel to proceed the Voiadge as their protest imports; yet though the s<sup>d</sup> vessel was insufficient, they refused to fit her, though many offers of the plaint<sup>s</sup> to defray the charge of the same; but turns part of the plaint<sup>s</sup> goods ashore in Newport & runs away with the rest; which was seized at Yorke in the Vessel, severall hogsheads of the plaint<sup>s</sup> markes & Numbers as appeares by the returne of the Inventory signed by the Record<sup>r</sup> & Constable of Yorke who seized the same; though the vessel was under Attachm<sup>t</sup> at Newport as appeares under the hand of the Record<sup>r</sup> of Rode Jsland & soe it may bee seen as will further be illustrated that the Defend<sup>t</sup> breakes both Charterparty & bills of loading; the plaint. never intending any such thing; soe that hearinge of their arrivall at Yorke with the Vessel the plaint. could doe noe less then Attach them to Answer his complainte for the not fulfilling of the bills of loading & Charterparty but its pretended by the Defend<sup>t</sup> that hee delivered the plaint<sup>s</sup> goods onshore at Newport by consent & a colaterall agreement under the hands of Arbitrato<sup>rs</sup> chosen by the plaint. which never yet lawfully appeared nor could doe because it is most false. For its most inconsistent with reason that the plaint. should haue received his goods Viz<sup>t</sup> the goods mentioned in the bill of loading when they were afterwards part of them Attached as is before expressed.

2<sup>ly</sup> As to the Charterparty the plaint. humbly conceives that the Gentlemen of the last Jury did not soe well minde the absolute & expeditious drift of the same for England or Ireland, where both their mentioned viz<sup>t</sup> Risco & Parker,

as part Own<sup>rs</sup> were bound to goe, though they never intended it as may bee judged by there running upon the Shoales w<sup>th</sup> there Vessell when there was a Navigable Channell out, whence many Vessells belonging here to Boston haue safely sailed through this very new inlett against which they haue protested before they got out to Sea, thinking & contriving thereby to quash the plaint. & save themselves from the damage of the Tobacco (which was susteined by the leekiness of the Vessell in taking in of the same) as appeares by the testimony of Edward Cox; & might haue made her tite before they came out, had they honestly intended the voidage.

3<sup>ly</sup>: The bill of loading & Charterparty being by the Defend<sup>t</sup> broken as may appeare by there putting in to the afores<sup>d</sup> places & refusing to goe the voidage it plainly proves that the plaint. never had the least thought of breaking them, soe that the damage which the plaint hath suffered is his thirty six hogsh<sup>ds</sup> of Tobacco & other goods being not delivered in England or Jreland which may bee supposed would there haue yeilded him sixpence per pound cleere of all charge; which amounts to ten pound sterling per hogshead at four hundred neate; but severall of the same weighed more; besides the loss of time & expence both in Boston & Rode Jsland, the plaint. being altogether a Stranger.

4<sup>ly</sup> Whereas the Defend<sup>t</sup> pleads that there is a colaterall bond of two hundred pound under the hand & Seal of the plaint. & therefore all former Covenants to bee voide & by it cut of; it is utterly denied by the plaint, for the plaints seeing what they intended to doe when they were at Rode Jsland & that there was noe penall Obligacion on the Charterparty, hee viz<sup>t</sup> the plaint. had reason to binde both it & the bill of loading as firme as hee could & soe consequently gaue them this bond to pay for what goods the plaint. should receive onshoare there Freight in Tobacco at two pence per pound as should bee judged the usuall Freight from Caralino to Boston. soe that this bond is but a firmer bindeing of the former Covenants, for the bond saith in these words (when the s<sup>d</sup> Miller shall receive such a quantity of hogsheads according to bill of loading in good Order & well conditioned, then to pay him the aforesaide Freight) soe that all along it is according to the first agreement in the maine for England or Jreland, for there's noe other place of delivery mentioned in the bond, soe that it is not what they thinke the bond imports must bee the intent of the same.

5<sup>ly</sup> As to the Testimonies of the Defend<sup>t</sup> & to begin with Noah Parker's; the plaint. humbly hopes that the Honorable Court & Gentlemen of the Jury will maturely consider of what validity his testimony is in law, for if they looke but into the Charterparty they will finde him a part Owner of the Vessell & lett upon his Accoump<sup>t</sup> as well as the others & soe a partner in the benefit of the same as will more fully appeare in the testimony of Edward Cocks & laurence Gonsallys; therefore the plaint. humbly conceives that his Evidence in law is not to bee taken & soe invallid because it is in his own case, if soe bee it were true: And as to the Accoump<sup>t</sup> of D<sup>r</sup> & C<sup>r</sup> signed by Noah Parker & the notional Evidences o<sup>r</sup> rather blanke papers of Stevens, Hodges, Rogers, Hawkins, Cocks & Blowers, which were the last Court exhibited by the Defend<sup>t</sup> & then look't upon by the Hon<sup>ble</sup> Court as noe Evidence in law; which if they had been the plaint. had neere three to one that were there Engaged also, but being not lawfull Evidence as is before specified therefore did forbear to put in what testimonies of that sort hee had, which are diametrically opposite to theires; & if the Gentlemen of the Jury will but looke upon all the papers Engaged at Rode Jsland they will



plainly see, that none of them all is upon Oath, soe the plaint. humbly conceives that the jury is bound to goe according to law & Evidence; which Evidences J conceive must bee taken upon Oath according to o<sup>r</sup> law: But suppose that Parkers Oath were true & hee noe party concerned & that the rest of the papers were good in law; yet there is none of them say that the plaint. ever demanded or desired his Tobacco to bee there landed, or that hee ever received all his goods according to bill of loading, either for good condicion quantity or place; noe, but some Say that the Defend<sup>t</sup> delivered some of it ashoare, some say a quantity of hogsheds was landed on m<sup>r</sup> Carrs wharfe, others say housed in his Warehouse which the s<sup>d</sup> Miller willingly received say others, besides severall other impertinent assertions; to which J Answer that 2. 3. or 4. are quantities of hogsheds or ten likewise are soe, Yet they are not thirty six soe not compleating the bill of loading in that respect. As for Trango's testimony, who swears that after Thomas Miller had received his Tobacco ashoare; hee swears not all his Tobacco, nor any certain quantity; but his Tobacco, that is some of his Tobacco, & that hee Shipped a quantity of the s<sup>d</sup> hogsheds for Boston in a Sloope. To Answer to which as to the other testimonies, that a quantity is not all as is before expressed; but to show the reason of the reception of that Tobacco, it was for the defraiding of divers necessary expences which the plaint. by the Defend<sup>ts</sup> bringing him amongst Strangers had exposed him to in Newport as Also to recruite in Boston necessary Apparrell in the roome of them which they deprived him of; And what small quantity that was soe rec<sup>d</sup> by the plaint. though hee was to pay Freight as afore-saide in Tobacco at two pence per pound doth not at all hinder or take of the force of the bills of loading & Charterparty, that the remaind<sup>r</sup> ought not to bee delivered according to bill of loading and Charterparty for a place & condicion & onely allowance to bee made for the quantity received in good condicion & not damnified which could not bee much for that the majo<sup>r</sup> part was damnified by the vessells insufficiency in taking in the same as appeares by the testimonys of Edward Cox

6<sup>ly</sup> The plaint. proues by Edward Cox, who was at Albemarle with them viz<sup>t</sup> Risco & Parker (who shipped him) all along till they come to Neuport on Rode Jsland, whome although they had shipped for the voidage to England or Ireland Yet suddenly after theire Arrivall at Nueport cleered him; For they knowing that had they not soe done, they could never haue Effectuated theire contrivances upon the plaint. Hee viz<sup>t</sup> the plaint. proues by s<sup>d</sup> Cox, that the Vessel was very leaky & the Tobacco most of it damnified in taking in of the same; & they knowing this well, went to goe out at a place where they were unacquainted with the s<sup>d</sup> Miller & his goods & soe severall times ran aground on the shoales on purpose as may easily bee supposed to blinde the plaint. by scaring him with theire protest against the same, to depriue him of his due damages by theire insufficiency, & not without danger to his person which is contrary to the law tit. Maritime affaires. Sect. 20. soe that running aground soe often & that purposely to & theire clearing of Edward Cox the Seaman are great Arguments of the Defend<sup>ts</sup> never intending to performe the Voiadge, hee was bound on but a meere delusion or cheate to the plaint.

7<sup>ly</sup> As to the Protest made by the plaint. at Newport on Rode Jsland, it's groundd on the Return under the hands of the appointed Surveyo<sup>rs</sup> of the s<sup>d</sup> Vessell; by the Authority there, how that shee was not founde insufficient by any beating on shoales, but for want of being rigged & fitted Sutable for such a Voiadge;



soe that theire protest will appeare to be fallacious & contrary to law. title. Maritime affaires Sect: 11. & 15. Thus haveing as wee suppose sufficiently proved the insufficiency of the Vessell, & other deceits of the Defend<sup>t</sup> The Plaint. humbly requests that the Hono<sup>r</sup><sup>ble</sup> Court & Gentlemen of the Jury wilbee pleased seriously to consid<sup>r</sup> how that from time to time the plaint. hath been abused by the Defend<sup>t</sup> & grant him releife in this deplorable condicion according to law.

Yo<sup>r</sup> humble Servant.

Thom: Miller

1673

These Reasons were received August. 27. 1673

per: Jsaac Addington Cler

The appeal was not allowed. Three other actions and counter-actions between Risco and Miller will be found in this book. See below, pp. 288, 299, 316. The Massachusetts courts, perhaps warned by the protracted Lawton and Bonner case, found in every instance for the defendant and so discouraged further litigation.]

#### SMITH ags<sup>t</sup> HUDSON

John Smith sen<sup>r</sup> of Dorchester plaint. ags<sup>t</sup> Cap<sup>t</sup> William Hudson Defend<sup>t</sup> the plaint. withdrew his accion.

#### LIDGETT ags<sup>t</sup> FREAKE

Peter Lidgett Attourney to Richard Pickford plaint. ags<sup>t</sup> John Freake administrato<sup>r</sup> to the Estate of Francis Sampson late of Nevis deceased defend<sup>t</sup> in an accion of acco<sup>t</sup> for refusing to pay one hundred sixty nine pounds four shillings one penny due to the s<sup>d</sup> Pickford from s<sup>d</sup> Sampson on acco<sup>t</sup> w<sup>th</sup> interest for four yeares & other due damages according to Attachm<sup>t</sup> Dat. july. 22<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. one hundred sixty nine pounds four shillings one penny whereof there is in the hands of m<sup>r</sup> Freake thirty three pounds eleven shillings six pence in provicions & in mony seven pounds fourteen shillings five pence which makes in all forty one pounds five shillings & eleven pence & costs of Court. forty one sh:

#### FRENCH ags<sup>t</sup> TYNG

Phillip French for account of m<sup>r</sup> Sammuell Shute & Benjamin Shute & Thomas Firmin plaint. against Jonathan Tyng Defend<sup>t</sup> in an accion of the case for withholding the summe of one hundred & fifteen pounds in mony due by bill bearing date the thirtieth day of the ight month. 1672. hee the sd Tyng refusing to pay the logwood specified in the s<sup>d</sup> bill, & promised to pay it in mony which

is that now sued for [ 145 ] with interest & other due damages according to Attachm<sup>t</sup> Dat: july: 14<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. one hundred & nineteen pounds twelue shillings in mony & costs of Court The Defend<sup>t</sup> appealed from the judgment of this Court to the next Court of Assistants & the s<sup>d</sup> Jonathan Tyng as principall in one hundred pounds & Arthur Mason & Thomas Dewer as Sureties in fifty pounds apeice acknowledged themselves respectiue bound to . . . prosecute his appeale . . .

[ The surviving documents on this case include only a Bill of Costs (S. F. 26707) and the following (S. F. 25919):

Phillip French his Answers to Jonathan Tyngs Reasons [of] Appeale from the Judgm<sup>t</sup> of the Last County Court at Boston

Whereas hee Sayth J then and Still Judged the process to bee Contrary to Law title accounts<sup>1</sup> being arrested by the plaint. Jn his owne name, J Answer the Defend<sup>t</sup> was neither Then nor now willing to abide by the Appealants Judgm<sup>t</sup> The Case being before the proper Judges neither is the process Contrary to Law title actions for the now defend<sup>t</sup> Then sued in the Same Capacity which the bill sued for puts him in Viz<sup>t</sup> as Philip French for Accon<sup>tt</sup> of m<sup>r</sup> Sammu[ell] Shute and Benj: Shute and Thomas Firmin and the bill being made paiaible to Philip French or ord<sup>r</sup> for acc<sup>tt</sup> of Sayd Shute and Firmin as by the Comparing the bill with The Attachment: is most evident, soe that the Defend<sup>t</sup> Shews in the Attachment in what Capacity and for whose acc<sup>nt</sup> hee sues and whereas hee Sayth there are other bills giuen for the Selfe Same mony now sued for, J Answer Jts false and neuer desire to haue the mony twice but wee bee glad of it once haueing been due about fiae yeares,

To his Second the plaintiffe had noe wrong by the Last Jury neither did they misapprehend the term of the bill its Trew the bill is for Six tunns and one halfe of good march: Logwood or one hundred and fiteene pounds in mony which may Stand most with the plaintiffes Conueniency At or before the Last day of Decemm: next ensuing soon After the bill was due the Defend<sup>t</sup> goeth to the plaintiffe for his Logwood or mony the plaintiffe then giues this Answer hee Could make more of his Logwood, then the Sume expresed, and so promised him the paiment thereof Jn mony haueing that priuiledge by the bill, as appeares by both the Testimonies soe that now haueing made Choise of and promised mony for the Specie to pay That bill in that promise we sue for.

To the third wherein hee Sayth the witnesses are parties espetially m<sup>r</sup> French, therein the plaintiffe Js Exceedingly mistakin and doth neither Consid<sup>r</sup> the Attachm<sup>t</sup> nor bill for whose Accon<sup>tt</sup> they are its true The Defend<sup>t</sup> hath sued in his owne name but for use and acc<sup>tt</sup> of other men according to bill neither is hee Concerned in one farthing of profit or Loss in the buisness therefore his and seruants testimonies in the Case are and ought to bee of validity and that as two witnesses wherease hee Sayth hees Condemned by one witnes, here are three positie witnesses against him Viz<sup>t</sup> the bill vnder his owne hand and owned by

<sup>1</sup> Probably "actions," as in the third line below where "accounts" was corrected to the present reading.

him Jn Court, Phillip French, and Thomas Meriwether and whereas hee Sayth let him sue for the promise and Then J Shall as well as J Cane Answer it, Answer the Defend<sup>t</sup> doth Sue the promise as it relates to the bill as the Jury may see by the Attachment in those very words and promised to pay in mony, and though the Defend<sup>t</sup> did in Aprill Sueing for this mony lay his accion wrong and therefore did withdraw it yett now hopes hee hath Stated it wright

To his Last: The Jury ought to giue intrest, because it is both Sued for by the Attachment and pleaded for and the Defend<sup>t</sup> doth now pleade that it may bee alloeued from that time till the Jssue by this Court and whereas hee Sayth the Defend<sup>t</sup> is noe wayes damnified for want of the Logwood being payde in time according to bill, Answer the Defend<sup>t</sup> is damnified, for Six tunns and one halfe of Logwood would haue yeilded him more then A hundred and fiteene pounds in mony at that time and therefore the Appealant tooke that aduantage of the bill and promised mony, Lastly the Appealant misinformes the Court for there hath been oppertunity of Shipping for England Since Decemb<sup>r</sup> Last as by Grenough Morten Paxton and Forman in euery of whome the Defend<sup>t</sup> was Concerned therefore such pretences and pleas are but Vaine

Phillip French J

#### ANDERSON ags<sup>t</sup> COX

John Anderson plaint. against Robert Cox Defend<sup>t</sup> in an accion of reveiw upon a trespass for that the s<sup>d</sup> Cox hath built a house partly upon the land of the s<sup>d</sup> Anderson neere his house in Boston by Halsey's wharfe aboue the highway whereby hee hath taken away the s<sup>d</sup> Andersons land about three foote at the upper corner of the s<sup>d</sup> house being to the damage of the plaint. one hundred pounds & other due damages according to Attachm<sup>t</sup> Dat. July: 24<sup>th</sup> 1673. . . . The Jury brought in theire verdict & founde for the plaint. the land in controversy & costs of Court being forty eight shillings & two pence.

Execucion issued 22<sup>o</sup> Aug<sup>o</sup> 1673

#### LONG ags<sup>t</sup> LONG

Richard Lord or John Williams Attournies of Thomas Long plaint. against Joseph Long of Dorchester Defend<sup>t</sup> in an accion of the case for unjustly withholding & emproveing a parcell of land of the s<sup>d</sup> Thomas Long by vertue of a deed of gift from his father in law<sup>1</sup> John Woolcock who married the s<sup>d</sup> longs mother, which parcell of land containeth ten or twelue acres lying in the great lotts within pale at Dorchester between the lots of Enoch Wiswall & Sammuell Rigby which was sometime the land of William Lane late of Dorchester

<sup>1</sup> The term "father-in-law" here means step-father.

deceased & given to the wife of the s<sup>d</sup> John Woolcock by will as will farther appeare being greatly to the damage of the plaint. & other due damages according to Attachm<sup>t</sup> Dat. july: 17<sup>th</sup> 1673. . . . The jury . . . founde for the Defend<sup>t</sup> costs of Court. being thirty three Shillings & four pence.

CLARKE ags<sup>t</sup> JACKLEN

Christopher Clarke plaint. against Sammuell Jacklen Defend<sup>t</sup> in an accion of the case for pulling up a post & breaking down about five foote of fence fastned to the s<sup>d</sup> Clarke his house next the streete & standing upon the s<sup>d</sup> Clarkes ground & thereby claiming the title of his land to the damage of the s<sup>d</sup> Clarke to the vallue of Forty pounds & other due dammages according to Attachm<sup>t</sup> Dated july. 22<sup>th</sup> 1673 [146]. . . . The Jury . . . founde for the plaint. ten shillings damage & costs of Court being thirty four shillings & eight pence.

ORCHARD ags<sup>t</sup> TOD

Robert Orchard plaint. against John Tod of Rowly Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. June 6<sup>th</sup> 1673.

The plaint. withdrew his Accion.

PECK ags<sup>t</sup> PAGE — vid. p: 182

Thomas Peck & John Heyman or either of them plaint<sup>s</sup> ags<sup>t</sup> John Page Defend<sup>t</sup> according to the Attachm<sup>t</sup> Dat. May: 15<sup>th</sup> 1673. The Accion was tryed this Court but the Defend<sup>t</sup> being out of this jurisdiction judgement is not to bee Entred till the next Court according to law.

RISCO ags<sup>t</sup> MILLER

Robert Risco plaint. against Thomas Miller Defend<sup>t</sup> in an accion of the case for unjust molestacion by severall attachments served upon the Brigantine of Albemarle whereof Robert Risco is Master whereby the s<sup>d</sup> Master with his Owners are damnified to the damage of one hundred pounds or thereabouts & other due damages according to Attachm<sup>t</sup> Dated July: 21<sup>th</sup> 1673. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court being eight shillings & four pence.

Execucion issued Aug<sup>o</sup> 7 1673.

[See above, pp. 277-85, and below, p. 299.]



## PARKER against MILLER

Noah Parker, plaint. against Thomas Miller Defend<sup>t</sup> in an accion of defamation for charging him for stealing severall Beaver & Otter skinns, whereby the plaint. is greatly damnified in his name & credit to the damage of one hundred pounds & other due damages according to Attachm<sup>t</sup> Dat. july: 23<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. six pence damage & costs of Court being twenty three shillings & six pence.

Execucion issued for 24<sup>th</sup> m<sup>o</sup> Aug<sup>o</sup> 6 1672

SHAPLEIGH ags<sup>t</sup> CLARKE & DAVIS

Majo<sup>r</sup> Nicholas Shapleigh plaint. against Cap<sup>t</sup> Thomas Clarke & Cap<sup>t</sup> William Davis Defend<sup>ts</sup> as administrato<sup>rs</sup> to the Estate of m<sup>r</sup> Valentine Hill deceased in an accion of Reveiw in a case wherein the aboues<sup>d</sup> Administrato<sup>rs</sup> did sue the s<sup>d</sup> m<sup>r</sup> Shapleigh for the forfeiture of a bond made by the s<sup>d</sup> m<sup>r</sup> Shapleigh & m<sup>r</sup> John Tryworthy to the s<sup>d</sup> Hill of three hundred pound for non paim<sup>t</sup> of a debt of two hundred quentalls of Merchantable Fish [ 147 ] to the s<sup>d</sup> Hill by which sute the s<sup>d</sup> m<sup>r</sup> Shapleigh hath been greatly damnified according to Attachm<sup>t</sup> Dat. july 16<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. reversion of the former judgm<sup>t</sup> & costs of Court,

HUDSON ags<sup>t</sup> SMITH

Cap<sup>t</sup> William Hudson plaint. against John Smith of Dorchester Defend<sup>t</sup> according to Attachm<sup>t</sup>

The plaint. withdrew his accion

HUDSON ags<sup>t</sup> HUNT

Cap<sup>t</sup> William Hudson plaint. against John Hunt Defend<sup>t</sup> in an accion of the case for that Anne Hunt wife to the s<sup>d</sup> John Hunt hath illegally broken up removed the land marke & intrenched upon a parcell of ground appertaining to him the s<sup>d</sup> Hudson & adjoining to the castle Tavern in Boston as by sufficient testimony further will appeare wherein the s<sup>d</sup> Hudson is damnified at leaste one hundred pounds sterling with other due damages according to Attachm<sup>t</sup> Dat July 17<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. that the Defend<sup>t</sup> hath unjustly intrenched upon the land of the plaint.

eight inches at the Northerly corner of the Sellar that the Defend<sup>t</sup> hath now stoned & sixteen inches at the corner joining to m<sup>r</sup> Glovers house on the backside of the s<sup>d</sup> Sellar & costs of Court 56<sup>s</sup> 10<sup>d</sup>

#### HUDSON ags<sup>t</sup> SKINNER &<sup>a</sup>

Cap<sup>t</sup> William Hudson plaint. ags<sup>t</sup> John Skinner & Francis Dudson Defend<sup>ts</sup> in an accion of trespass upon the case for forceably comming & building upon his ground after warning given them to the vallue of one hundred pounds & other due damages according to Attachm<sup>t</sup> july: 23<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. five shillings in Mony & costs of Court

#### HUDSON ags<sup>t</sup> W<sup>m</sup> STOUGHTON Esq<sup>r</sup> &<sup>a</sup>

Cap<sup>t</sup> William Hudson plaint. ags<sup>t</sup> William Stoughton Esq<sup>r</sup> & Nathaniell Davenport adm<sup>rs</sup> to the Estate w<sup>ch</sup> formerly belonged to Cap<sup>t</sup> Ri: Davenport deceased Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. May: 28 1673.

This accion was continued till the next Court of this County.

#### HUDSON ags<sup>t</sup> ATHERTON &<sup>a</sup>

Cap<sup>t</sup> William Hudson plaint. ags<sup>t</sup> Jonathan Atherton Timothy Mather James Throughbridge & Obadiah Swift adm<sup>rs</sup> to the Estate which formerly belonged to Majo<sup>r</sup> generall Humphry Atherton deceased Defend<sup>t</sup> accord. to Attachm<sup>t</sup> dat. july: 23 1673 this accion was continued till y<sup>e</sup> next Court of y<sup>s</sup> Court [ 148 ]

#### COWELL ags<sup>t</sup> RIGBEE

Edward Cowell plaint. ags<sup>t</sup> Sammuell Rigbee Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July: 17<sup>th</sup> 1673. The plaint. withdrew his accion.

#### DOWNING ags<sup>t</sup> DOYLY

Elisabeth Downing administratrix to the Estate of her late husband Dorman Downing deceased plaint. ags<sup>t</sup> John Doyly of Brantery Defend<sup>t</sup> in an accion of the case for taking away corn & cattle & other goods without her order & consent & refusing to deliver the same to her againe but doth detaine them to the plaint<sup>s</sup> damage & other due damages according to Attachm<sup>t</sup> Dated July: 5<sup>th</sup> 1673. . . .

The Jury . . . founde for the plaint. the calfe & pigg Owned in Court or thirty four shillings in provitions & costs of Court being 14<sup>s</sup> 6<sup>d</sup>

Execucion issued Nov<sup>r</sup> 3 1673

#### HUDSON ags<sup>t</sup> ATHERTON

Cap<sup>t</sup> William Hudson plaint. against the goods or Estate which formerly belonged to Major<sup>r</sup> generall Humphry Atherton deceased now in the hands of Jonathan Atherton eldest son of the s<sup>d</sup> Major<sup>r</sup> gen<sup>l</sup> Atherton Timothy Mather James Throughbridge & Obadiah Swift administrato<sup>rs</sup> to the s<sup>d</sup> goods or Estate or elsewhere Defend<sup>ts</sup> in an action of Debt to the vallue of twenty two pounds in mony due upon the ballance of Account & due interest & all other due dammages according to Attachm<sup>t</sup> Dat. July: 23 1673. . . . The Jury . . . founde for the plaint. twenty one pounds & eight pence halfe penny in mony & costs of Court being twenty nine shillings & six pence.

Execucion issued aug<sup>o</sup> 27<sup>th</sup> 1673 for: 22<sup>li</sup> 10<sup>s</sup> 2<sup>d</sup> ½ m<sup>o</sup>

#### BONNER ags<sup>t</sup> GIBBS &<sup>a</sup>

John Bonner plaint. against Benj<sup>a</sup> Gibbs & Henry Lawton Defend<sup>ts</sup> in an accion of the case for breach or non performance of their bond or Engagement in one hundred pounds apeice bound jointly & severally made at a County Court held at Boston the 29<sup>th</sup> of October 1672 by their not performing of an Award under the hands & seales of m<sup>r</sup> John Joyliffe m<sup>r</sup> Peter lidget & m<sup>r</sup> Thomas Deane bearing date the twentieth of January 1672 relateing thereunto w<sup>th</sup> other due damages according to Attachm<sup>t</sup> Dat. july 24. 1673. . . . [ 149 ] The jury . . . founde for the plaint. Two hundred pounds the forfeiture of the bond & costs of Court. the Defend<sup>t</sup> Benjamin Gibbs appealed from the judgment of this Court to the next Court of Assistants & the s<sup>d</sup> Benj<sup>a</sup> Gibbs as principall in four hundred pounds & m<sup>r</sup> John Saffine & m<sup>r</sup> Richard Wharton as sureties in two hundred pounds apeice acknowledged themselves respectiuey bound to . . . prosecute his Appeal from the judgment of this Court at the next Court of Assistants to Effect.

[ This case takes up the story of the protracted litigation between Supercargo Lawton and Captain Bonner of the ketch Recovery, where we left it in the note to *Lawton v. Bonner's Bond*, pp. 176 ff. Gibbs'

appeal to the Court of Assistants was allowed, and was heard before that Court on September 2, 1673 (Records of Court of Assistants, iii. 249-50), on the same day as an appeal of Bonner against a judgment of the Middlesex Court in favor of Lawton! In the appeal from the Suffolk court, the judgment of the lower court in favor of Bonner was affirmed; and on Lawton's plea the Court "chancered the bond with all damages to one hundred pounds mony for the plaintiffs to pay or that they deliver possession of the house & land and in other respects performe the Award." Bonner's bill of costs is printed with this decision in Records of Court of Assistants, iii. 250. The next development was Lawton's indictment for perjury. See below, p. 302.]

#### ASHTON &<sup>a</sup> ags<sup>t</sup> BONNER & EVERELL

Henry Ashton John Ireland Henry Lawton & Benj<sup>a</sup> Gibbs or either of them plaint<sup>s</sup> against John Bonner and James Everill or either of them Defend<sup>ts</sup> in an accion of the case for breach or non performance of theire bonds or Engagements in one hundred pounds apeice jointly & severally entred at a County Court held at Boston on the 29<sup>th</sup> day of October 1672 by theire not performing of an award or awards under the hands & Seales of m<sup>r</sup> John Joyliffe m<sup>r</sup> Peter lidgett & m<sup>r</sup> Thomas Deane bearing date the twentieth day of January 1672 relateing to the aforesaide bond concerning severall differences between s<sup>d</sup> Bonner Aston & Ireland with other due damages according to Attachm<sup>t</sup> Dat. July 24<sup>th</sup> 1673. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court, being eight shillings.

[The arbitral award which Bonner refused to respect is printed in note to Bonner v. Ashton, above, p. 167. Following this strange failure of the Court to hold Bonner to the performance of his bond, Ashton decided to make the best of his way to Virginia, with consequences which are related in the note to Ashton v. Gibbs, at the beginning of the January session, 1673/74. See below, pp. 348-58.]

#### DINELY ags<sup>t</sup> STEENWICK

Fathergon Dinely adm<sup>r</sup> to the Estate of John Dinely deceased plaint. against the goods or Estate of Cornelius Steenwick of New Yorke in the hands of Cap<sup>t</sup> W<sup>m</sup> Davis or wherever it may bee founde Defend<sup>t</sup> in an accion of reveiw of a judgm<sup>t</sup> the s<sup>d</sup> Davis (as hee was Attourney aforesaide) obtained ags<sup>t</sup> the s<sup>d</sup> Dinely as hee was adm<sup>r</sup> to John Dinely aforesaide deceased at the County Court held at



Boston in Aprill last which accion was for illegally seizing apprizing & making division of a house & land that the aforesaide John Dinely was never legally possessed of noe division haveing ever been made between the s<sup>d</sup> John & Fathergon Dinely in the s<sup>d</sup> house & land but after the death of John Dinely Fathergon Dinely's brother as adm<sup>r</sup> to the deceased his Estate was legally possessed of the s<sup>d</sup> house & land & hath fully Satisfied for them as may more fully appeare by Fathergon Dinely his Accoumpt given unto & accepted of by the County Court with all due damages according to Attachm<sup>t</sup> Dat. July 16<sup>th</sup> 1673. [150] . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court: The plaint. appealed from the judgment of this Court to the next Court of Assistants & the s<sup>d</sup> Fathergon Dinely as principall in three hundred & twenty pounds & John Sandys & James Meares as Sureties in one hundred & sixty pounds apeice acknowledged themselves respectiuely bound to . . . prosecute his appeal from the judgment of this Court at the next Court of Assistants to Effect.

[See above, pp. 167, 246. This was the fifth time that the courts had held against Dinely in the matter of his brother's debt to the New Yorker. Once more he appealed to the Court of Assistants, which on September 2, 1673, "found for the Appellant Reuersion of the former Judgment with the land in Controversy & Costs of Courts" 4l 10s 2d. See case of Davis v. Dinely at the session of 27 April, 1675.]

#### LAWTON ags<sup>t</sup> PECK

Henry Lawton plaint. ags<sup>t</sup> Thomas Peck Defend<sup>t</sup> in an accion of the case upon a reveiw of a judgm<sup>t</sup> obtained by the s<sup>d</sup> Peck at a County Court held at Boston in October last against the s<sup>d</sup> Lawton for forty five pound ten shillings mony damage & costs of Court upon which judgment Execucion was granted against & extended upon the s<sup>d</sup> Lawton & fully satisfied by him to his great damage & other due damages according to Attachm<sup>t</sup> Dated the 30<sup>th</sup> of May: 1673. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court. The plaint. appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Henry Lawton as principall in five pounds & m<sup>r</sup> Habbakkuk Glov<sup>r</sup> & m<sup>r</sup> Rich<sup>d</sup> Wharton as sureties in fifty shillings apeice acknowledged themselves respectiuely bound to . . . prosecute his appeale. . . .

[Peck v. Lawton, above, p. 163. The record of this appeal has not been found; but there is an undated appeal of Peck against a judgment in favor of Lawton of about this time, printed in the Records of the Court of Assistants, i. 8. For further developments, see Lawton's Sentence for perjury, below, p. 302.]

PARMITER ags<sup>t</sup> PERRY

John Parmiter plaint. against Seth Perry Defend<sup>t</sup> in an accion of the case for the s<sup>d</sup> Perry his neglect in the duty of his Office while hee was constable of Boston in makeing of a false return of an Attachm<sup>t</sup> w<sup>ch</sup> hee served upon the Estate of John Scarlett of Boston as appears by the Attachm<sup>t</sup> bearing date the 21<sup>th</sup> day of the eleventh month 1672. by w<sup>ch</sup> neglect of the s<sup>d</sup> Perry as hee was Constable the plaint. was non suited w<sup>ch</sup> proved to bee & is greatly to the damage of the plaint. [ 151 ] as will further appeare & other due damages according to Attachm<sup>t</sup> Dat. July: 21<sup>th</sup> 1673 . . . . The Jury . . . founde for the plaint. two pounds nine shillings in mony damage & costs of Court being forty six shillings & eight pence.

Execucion issued Aug<sup>o</sup> 22<sup>th</sup> 1673 for 4<sup>li</sup> 15<sup>s</sup> 8<sup>d</sup>

WAY ags<sup>t</sup> HUDSON

L<sup>t</sup> Richard Way plaint. against Cap<sup>t</sup> William Hudson Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July 24<sup>th</sup> 1673: The plaint. upon the acknowledgm<sup>t</sup> of a judgm<sup>t</sup> withdrew his accion.

CLARKE ags<sup>t</sup> CUMBY

Cap<sup>t</sup> Thomas Clarke Esq<sup>r</sup> plaint. against Humphry Cumby Defend<sup>t</sup> in an accion of the case for the s<sup>d</sup> Cumby's deteining & refusing to give possession of a parcell of land hee rented of the s<sup>d</sup> Clarke as per agreement made the sixt day of July. 1652. & other due damages according to Attachm<sup>t</sup> Dat: July: 23<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. the land now sued for & costs of Court being thirty eight shillings & eight pence

Execucion issued 15 Aug<sup>a</sup> 1673.

STOUGHTON Esq<sup>r</sup> ags<sup>t</sup> BISHOPS

William Stoughton Esq<sup>r</sup> Attourney for m<sup>r</sup> Richard Saltonstall plaint. against Margaret Bishop Widdow & Sammuel Bishop Executo<sup>rs</sup> to the last will & Testam<sup>t</sup> of Thomas Bishop late of Ipswich

deceased Defend<sup>t</sup> in an accion for withholding a debt of three hundred pounds sterl. due upon bond & all due damages according to Attachm<sup>t</sup> Dat: July: 18<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. three hundred pounds sterling according to bond & costs of Court. the Defendant Sam<sup>ll</sup> Bishop appealed from the judgment of this Court to the next Court of Assistants & the s<sup>d</sup> Sam<sup>ll</sup> Bishop as principall in six hundred pounds & Nathan<sup>ll</sup> Bishop & Tho: Bishop as sureties in three hundred pounds apeice acknowledged themselves respectuely bound to . . . prosecute his Appeale. . . .

[ There are 15 papers preserved for this case in S. F. 1234. No. 1 is the writ of attachment; no. 8, the bond; no. 9, Saltonstall's power of attorney to Stoughton; nos. 10 and 14 are depositions about demanding payment of the debt in 1671; no. 12 is the bill of costs; no. 13 a copy of part of Thomas Bishop's will; no. 11 is printed in Records of the Court of Assistants, iii. 251. The agreement respecting the mill, which was the subject of this suit, follows (S. F. 1234.3):

Articles of Agreement made & Concluded by & betweene Richard Saltonstall of Jpswich Esq on the one part & Thomas Bishop of Jpswich & John Todd of Rowley Merchante on the other part this twenty-fifth day of March 16<sup>83</sup><sub>74</sub>.

The sayd Richard doth lett to Farme his Mills at Jpswich with all appurtenances vnto the sayd Thomas & John (their Heirs or Execut<sup>rs</sup>) for the tearme of seaven years & one Quarter next ensuing the date herof to have and to hold the sayd Mills; (against the sayd Richard & all persons claiming of by & vnder him) with all profits & benefitts, produced, & to bee produced by the same; for the time & tearme afforsayde! - - - on consideration whereof [the saide] Thomas & John for themselves their Heirs & Executors: doe promise & Covenant to & with the sayde Richard his Heirs & Assigness to pay vnto him or any of them for the first five Quarters, that is to say, from the twenty fifth of March afforsayde vnto the twenty fourth of June which shall bee in the yeare one thousand six hundred, sixty & five, the summ of one hundred thirty & seaven pounds ten shillings, at the Jles-of Shoals in Codfish dry, merchantable, well cured & conditioned, at the rate of thirty two Ryalls a Kenta[ or at] price current (as the sayde Richard shall choose:) & the sayd Thomas & John doe promiss and Covenant as afforsayde that all after payment shall bee made every yeare at the Rock in Marbleheade in such fish as afforsayde, & at the rate formentioned & that they will pay every yeare the summ of one hundred & ten pounds. save only that ten pounds more is to bee added to the last yeare! - - - And the sayde Thomas & John doe promiss & Covenant as afforsayde that at the end of the tearme forementioned the sayde Mills with all vtensills & appurtenances, as also the Mill-damm, shallbee returned in like good condition as now they are excepting weare & teare of Milstons & such dammage as will accrue nearly & only by length of time & not otherwise - - - And the sayde Thomas & John doe promiss & Covenant as afforsayde that for the whole team abovementioned, the sayde Mills with all appurtenances shall be kept in good condition as formerly they have, or as

they ought to bee; and that the sayde Richard shall not bee præjudiced in his Grant of the sayde Mills; by any default of theirs respecting the Towne of Jpswich; or any Jnhabitant therof. - - And y<sup>e</sup> sayde Thomas & John doe promiss & covenant as afforsayde joyntly & severally: that the sayde Fish shall bee payde & delivered as afforsayde & that the loss & dammage by disappoyntment if any bee shalbee borne by them, their Heirs &c; & that they the sayde Thomas & John will give their Bond of two thousand pounds, of lawfull money of England; for performance of this Agreement & every Article of the same. — And the sayde Thomas & John doe promiss & Covenant as afforsayde y<sup>t</sup> they will admitt noe partner to this Agreement without the sayde Richards consent first had & obtained in writing; & that Thomas Wait shall not bee employed any more (as Miller in the afforsayde Mills;) after the expiration of his present Covenant; & during the extent of this Agreement - - - Furthermore the sayde Thomas & John doe promise & Covenant as afforsayde, that vpon their breach of this Covenant, in any clause or Article therof; it shall bee lawfull for the sayde Richard, his Heirs or Assigness to Reenter vpon the præmisses; & notwithstanding such Reentry had & obtained; to proceede at law for such further satisfaction as may bee due in such a case; vnto him the sayde Richard. Jn witness herof the partyes abovenamed have subscribed with their hands & sealed with their seals, the day & yeare first above written

R<sup>d</sup> Saltonstall [ seal ]  
 Thomas Bishop [ seal ]  
 John // [ seal ]

Signed, sealed, & delivered in the presence of Vs,

Thomas Andrews  
 Thomas Wells

It is provided & so it was provided & concluded by the partyes abovenamed before the sealing & subscribing of the afforsayde Articles; that all Rates; Taxes, & Assessments for & in respect of the Mills afforsayde shall bee payde & discharged by the above-named Thomas & John; their Heirs, Executors or Administrators; which is attested to by Vs

[ *Endorsements* ]:

Lease of the Mills in Jpswich made in the year 16<sup>83</sup>/<sub>4</sub>

There is due to me by this Lease above 140<sup>li</sup> for which I will not sue, unless J should bee greatly provoked!

The following document (S. F. 1234.6) was part of the evidence.

20<sup>th</sup> 6 month 1664

I acknowledge my Selfe to bee indebted to Thomas Bishop of Jpswich m<sup>r</sup>chant the Summe of foure pounds to bee paid in wheate vpon Demand.

Alsoe J promise & Couenant that hee shall Enjoy my house lot orchard & planting Lott Rent Free the Space of two yeeres. — Provided that if the said Thomas Doo not hould the Milles at Jpswich longer then Seaven yeeres and one quarter which is wholly & only at my choice (as by an Agreem<sup>t</sup> of the Same Date with these presents may appeare) then the aforesaid Summe of Foure pounds shalbee repaid by the said Thomas or his Assignes & the promise abovementioned relating to the house lot Orchard & planting lott shalbee void

Witness John Whipple  
 William Fellowes.

Richard Saltingstall



Willm Fellowes made oath that he was present & saw m<sup>r</sup> Richard Saltingstall  
 signe this writing taken July 24<sup>th</sup> 1673 Before mee Daniell Demson  
 . . . true copie . . . Jsaac Addington Cler

The defendant's Reasons of Appeal (S. F. 1234.4) and Stoughton's Answer thereto (S. F. 1234.7), follow. The references in this document to pp. 1 and 158 of the Laws are to provisions of the Body of Liberties which are incorporated in those pages of The General Laws and Liberties of the Massachusetts Colony, 1672. Apparently the appeal was not allowed.

Reasons of Apeale from the Judgment of the Honored County Court Last held at Boston unto this Honored Court of Assistants now sitting at Boston in an Action of the Case depending betweene the Worshipfull M<sup>r</sup> Stoughton Atturny to Richard Saltonstall Esqr. plantiffe & Margaret & Samuell Bishop executors to Thomas Bishop Late of Ipswich deceased defendants. The Case Arising thus

1 R: The plaintiff sues the defendants and also Recovers a Judgment against them for Withholding a Debt of 300<sup>li</sup> sterl: due upon Bond unto Richard Saltonstall Esqr from Thomas Bishop which Bond was brought into court but not being owned by the defendants nor yet proved by the plantiffe by so much as one witness when the Law Requires two or that y<sup>t</sup> is Equivolent these defendants humbly Conceiue it to be invalid and of no force against them

2 R: if the Bond Afforsd were owned by the defendants or proved against them by the plantiffe yet the defendants doth humbly conceiue it not to be broke or forfeited, because the condition of the Bond Afforsd hath Refference to Articles of Agreement made betweene Richard Saltonstall Esqr and Thomas Bishop deceased which Articles neither being owned by the defendants nor yet proved by the plantiffe the defendants doth humbly conceiue it not to be broke that is the Bond nor Any condition of it

3 R: why the defendants doth not consent to nor can be satisfied with the Judgment of the honored County Court Afforsd, is because the honored Court being to accept of the Jurys Verdict, and the Gent. of the Jury not Proceeding according to Law as the defendants doth humbly conceiue, for they being to Judge according to Law (& evidence) which is cleare for the defendants as we humbly conceiue for in the First Law it is said page the first, that no mans Goods or estate shall be Taken from him under Colour of Law &c: and also in page 158 there it is expressed that no man shall be put to death without the Testimony of two or three witnesses or that which is equivolent therunto, now if the Law provides that no mans life shall be Taken from him without 2 or more witnesses, Then it must also necessarily follow that no mans Liuely hood and estate shall be Taken away from him without the same number of evidences Afforsd notwithstanding the plantiffe hath produced four evidences yet not so much as one of them is A circumstantiall evidence in this Case First as to the evidences of Robert Lord sen & Robert Lord Jun They do not at all Testifye to this Case as the defendants doe humbly conceiue for they sware nothing but what Richard Saltonstall Esqr Requested them to doe for him in his owne Case and therefore of no vallue, and also what margaret Bishops Answer to them was that the house

and Land they had Attached was a house & Land they had bought of Richard Saltonstall Esqr:

These Testimonys having no Refference to the Bond the plantiffe hath sued for, the defendants humbly conceiveth it to be invalud, & as for the testimony of Thomas Bishop we humbly conceiue it hath no Refference to this bond now sued for, for he only swareth that after the Testes Afforsd had demanded of margaret Bishop 150<sup>l</sup> in Fish she sayd that if mr Saltonstall would stay no Longer for it, she would pay him so much Fish, not Knowing that mr Saltonstall had any such Bond of her husbands, and as for the Testimony of the worshipfull mr Danforth we humbly conceiue it hath no Refference to this bond now sued for by the plantiffe for he only Testifieth, that either Thomas Bishop or Samuell Bishop held some treaty or made some offer of payment for an house but not by virtue of Any bond (for they knew of none) which for other Reasons they might at that time proffer, which hath no Reference to this action which is now before the honored Court & Jury to be issued according to law, which we desire & doubt not but will be attended, and then no bond being proved, no bond can be found against us defendants, for de non apparentibus & non existentibus eadem est ratio,<sup>1</sup> and also it hath been the Judgement of this honored Court where a Bill or bond hath beene sued and not proved legally by one witness at the least and also circumstantially by him whom it was due to it hath been Judged invalid, and therefore here being no witness to prove this Bond Afforsd and also there being no mony neither legally nor honestly due the defendants doth humbly craue & desire some Relife from this Honored Court & Jury for the Reversion of that Judgment Granted against the widdow & Fatherless, Thus Comitting of our Case to, & Leaving it with, This honored Court & Jury seriously to consider of it, We Remaine your Humble Servants: Margaret Bishop: & Samuell Bishop:

These Reasons were received August: 17<sup>th</sup> 1673

Per: Jsaac Addington Cler

The defendants answer, to the Reasons of Appeale given in by the Excecuto<sup>rs</sup> of Tho: Bishop. pl.

Whereas the purport of the Plant<sup>e</sup> Reasons, is a Seeking to evade the righteous Judgem<sup>t</sup> of y<sup>e</sup> Coun: Court, for defect of their testimony on oath y<sup>t</sup> Subscribed the bond, & Articles, y<sup>e</sup> one haueing reference to y<sup>e</sup> other, the Def<sup>t</sup> shall not abuse y<sup>e</sup> patience of this hon<sup>d</sup> Court, (as y<sup>e</sup> manner of too many is) w<sup>th</sup> any reply to many frivolous words & alligations, but shall breifly make answ<sup>r</sup> as followeth.

Humbly conceiuing that it is without controversie.

1. That Thomas Bishop deceased, bargained & had of Ri: Saltonstall Esq<sup>r</sup> his late mansion house & land Scittuate in Jpswich, on condiccion to pay 150<sup>l</sup> in mann<sup>r</sup>, as the Articles declare the w<sup>ch</sup> Articles were Exhibited by y<sup>e</sup> p<sup>ls</sup> at Salim last Coun: Court, being y<sup>e</sup> counterpaur of those put into this Court

2. At y<sup>e</sup> Expiracion of the terme when the money was to be pay<sup>d</sup> m<sup>r</sup> Saltonstall made demand of y<sup>e</sup> s<sup>d</sup> debt, & y<sup>e</sup> Excecuto<sup>rs</sup> of the said Bishop then promised paym<sup>t</sup>, this is confessed by y<sup>ms</sup>. as the Records of y<sup>e</sup> Court will show: yet never paid any part thereof:

3: m<sup>r</sup> Saltonstall not being payd, was at liberty by y<sup>e</sup> Articles passed between y<sup>m</sup> either to reenter, or sue the bond, as to him should seeme meet: and he being shortly to take his voyage for England made an assignem<sup>t</sup> of y<sup>e</sup> said house & land

<sup>1</sup> Perhaps quoted from Coke, who often uses the maxim, e. g., 4 Reports 47a.

vnto y<sup>e</sup> relict widow & children, of y<sup>e</sup> Reverend m<sup>r</sup> Jonath: Mitchell late of Cambr deced, who accordingly demanded possession thereof, of y<sup>e</sup> Said Bishops, and was denyed wherevpon a sute was commenced for possession at y<sup>e</sup> last Coun: Court at Salim, where y<sup>e</sup> Said Bishops confessed y<sup>e</sup> bargaine made w<sup>th</sup> m<sup>r</sup> Saltonstall, & Exhibited the Articles made between them, in barr of y<sup>e</sup> p<sup>ls</sup> y<sup>n</sup> sute. pleading 1. a defect in the assignem<sup>t</sup> made to m<sup>rs</sup> Mitchell. 2. y<sup>t</sup> m<sup>r</sup> Saltonstall could not assigne y<sup>e</sup> same before his reentry, & also that m<sup>r</sup> Saltonstall had a bond given for paym<sup>t</sup> w<sup>ch</sup> he might sue when he pleased, & had made entrance of sute, and therefor could not now enter on the lands conveyed. Also in discourse with the then attorney for m<sup>rs</sup> Mitchell, y<sup>e</sup> s<sup>d</sup> Bishops tendred to pay y<sup>e</sup> money, in case y<sup>t</sup> they might haue a years time.

Wherevpon y<sup>e</sup> Plant, haueing heard their plea, although it altered not the case as to matter of equity, yet Seeming to haue Some coulour of law y<sup>n</sup> he withdrew his accion, and after sometime made demand of y<sup>e</sup> money according to covenant, w<sup>ch</sup> being denyed, occasioned the now def<sup>t</sup> to sue the bond at last Coun: Court at Boston, where the now p<sup>l</sup> y<sup>t</sup> had as is before recited, pleaded ag<sup>t</sup> a Surrender of possession of y<sup>e</sup> house & land p<sup>r</sup>tending y<sup>t</sup> bond lay out ag<sup>t</sup> them for paym<sup>t</sup> thereof, so also then he pleaded as much ag<sup>t</sup> paym<sup>t</sup> for y<sup>e</sup> same, although by bond obliged thereto, p<sup>r</sup>tending y<sup>t</sup> it was not legally proved, bec<sup>e</sup> the witnesses that had subscribed the same appeared not in Court, the one being dead, and the other a sojourn<sup>r</sup> in the Said Bishops family, who although he was summoned, & money put into his hand to bring him to y<sup>e</sup> Court, yet he would not appeare before the Court to give his testimony as in law & conscience he was Obliged. how farr the p<sup>l</sup> had the contrivance hereof himselfe best knows.

Now let the premises be Duly considered, together with the evidences [in] the case y<sup>t</sup> are before the Court, y<sup>e</sup> def<sup>t</sup> humbly conceiue<sup>t</sup> y<sup>t</sup> it is fully demonstrated, y<sup>t</sup> y<sup>e</sup> debt sued for is aswell legally proved as honestly Due yet evident it is, by y<sup>e</sup> p<sup>ls</sup> now plea, y<sup>t</sup> if y<sup>e</sup> death of one witnes, & y<sup>e</sup> refuseing of another to give his testimony to his owne hand, (as is undoubtably true) if this will pay a debt from them so justly due, they faile not to vrge the same to the vttermost, endeavouring to make the hon<sup>d</sup>. Court, (appoynted for y<sup>e</sup> releife of the oppressed) a Patron of their so great a peece of injustice & fraud. the Evill thereof being aggravated, by the great oppression done to the helpless widow, & fatherless children of so Reverend a man Vpon whon this wrong will finally Center.

2. 7. 1673 ]

William Stoughton

[ 152 ] MILLER ags<sup>t</sup> RISCO

Thomas Miller plaint. ags<sup>t</sup> Robert Risco Defend<sup>t</sup> according to Attachm<sup>t</sup> Dated July: 1: 1673. The plaint. in failer of process was non suited & costs granted the Defend<sup>t</sup> seven shillings & eight pence.

Execucion issued 6. 6<sup>mo</sup> 73. for 7<sup>s</sup> 8<sup>d</sup>

RUSSELL Esq<sup>r</sup> ags<sup>t</sup> BAREFOOTE

Richard Russell Esq<sup>r</sup> Treasuro<sup>r</sup> for the Massathusetts Jurisdiction plaint. against Walter Barefoote Defend<sup>t</sup> in an accion of the case for the breach of his bond & non performance of the Court of Assist-



ants Order & Sentence in returning to England to his wife by the first Ship & for practising physick & Chirurgery on severall persons in this jurisdiction & thereby forfeiting ten pounds for each act as that Order declares with other due damages according to Attachm<sup>t</sup> Dat. May: 8<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. one hundred pounds forfeiture of his bond of good behavio<sup>r</sup> & twenty pounds for non performance of the Court of Assistants Order in not returning to England to his wife or to depart this jurisdiction & costs of Court.

BRATTLE ags<sup>t</sup> CROSBY

Thomas Brattle Attourney to m<sup>r</sup> Samm: Bradstreete plaint. ags<sup>t</sup> Joseph Crosby Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: July: 16<sup>th</sup> 1673. The plaint. in failer of process was non suited & costs granted the Defend<sup>t</sup>

RICHARDS fin'd 13<sup>s</sup> 4<sup>d</sup>

William Richards of Weymouth making default in not appearing according to summons to serve on the Grandjury was fined to the County thirteene shillings & four pence in mony.

WILLIAMS Cautioned

Vpon the appearance of Nathaniell Williams in Court & humbly acknowledging his indiscretion in disswading a delinquent that was in his way (upon warrant) goeing before the Worpp<sup>l</sup> W<sup>m</sup> Stoughton Esq<sup>r</sup> desiring the pardon of the hono<sup>r</sup><sup>d</sup> Court the Court was pleased to caution him & dismiss him.

Order about Dorchester & Brantery.

The Town of Brantery being presented for not running the line with the Town of Dorchester for these six yeares last past. The Court Orders & appoints that the select men both of Dorchester & Brantery appoint meete persons out of either of theire Towns to run the line between the s<sup>d</sup> Towns by the next Court of this County upon penalty of the law & that the Town of Dorchest<sup>r</sup> [ 153 ] give notice to Brantery of the time appointed by them & likewise that the s<sup>d</sup> Townes give notice to the select men of Boston of the time appointed to that end.



Auditt for Cap<sup>t</sup> HUDSONS Acco<sup>ts</sup>

The Court Orders & appoints Cap<sup>t</sup> Edward Hutchinson m<sup>r</sup> Humphry Hodges & m<sup>r</sup> John Wally to bee a Committee to Audit the Acco<sup>t</sup> given in by Cap<sup>t</sup> William Hudson in an accion hee commenced ags<sup>t</sup> the Adm<sup>rs</sup> of the Estate of the late Cap<sup>t</sup> Ri: Davenport & to make return how they finde it to this Court. The s<sup>d</sup> Committee is also Ordered to Audit the Acco<sup>t</sup> given in by s<sup>d</sup> Hudson in his case ags<sup>t</sup> the Adm<sup>rs</sup> to the Estate of the late Major Gen<sup>l</sup> Humphry Atherton & to make return of that also as aboues<sup>d</sup>

## HUDSON to WAY

Cap<sup>t</sup> William Hudson appeared in Court & acknowledged judgm<sup>t</sup> ags<sup>t</sup> himsele & Estate to L<sup>t</sup> Richard Way for forty four pounds eleven shillings & six pence in mony.

Execucion issued 21. 6<sup>mo</sup> 73 for 44<sup>li</sup> 11<sup>s</sup> 6<sup>d</sup> m<sup>o</sup>

## WOODS Freedom

Ellis Wood tooke the Oath of freedom of this Colony.

TURILLS &<sup>a</sup> Discharge

Deborah Davis (Attourny to her husband Samml Davis) & John Davis her brother appeared in Court where they gaue a discharge to Daniell Turill & John Baker adm<sup>rs</sup> to the Estate of there late Father which discharge remaines on file & the Court thereupon discharged the aboues<sup>d</sup> adm<sup>rs</sup> from s<sup>d</sup> Office

## ADDINGTON Clarke

The Court Orders & appoints Isaac Addington to bee henceforth Clarke to the County Court of Suffolke.

BENDALL Record<sup>r</sup>

The Court Orders & appoints that FreeGrace Bendall bee henceforth Recorder of this County of Suffolke

## TIMBERLAKES discharge

Vpon due proclamacion made William Timberlake was discharged from his bonds of good behavio<sup>r</sup>

## EDSALLS discharge

Vpon like proclamacion Elisabeth Edsall was discharged from her bonds of good behavio<sup>r</sup>

## STARKEYS discharge

Vpon like proclamacion John Starkey was discharged from his bonds of good behavio<sup>r</sup>

ROBBINSON'S Sent<sup>a</sup>

James Robinson presented for Rayling & using wicked expressions The Court disinables the s<sup>d</sup> Robinson from crying anything as a publique Cryer & upon his first attempt soe to doe that hee shalbee forthw<sup>th</sup> apprehended by the Constable of Boston & bee whipt w<sup>th</sup> fifteen stripes severely laide on & to pay Fees of Court.

SCOTTS Sent<sup>a</sup>

Sarah Scott presented for Reviling & strikeing her Mother. Vpon due hearing of the case [ 154 ] The Court Sentances her to stand upon a Block or Stoole of two foote high in the Markett place in Boston upon a thursday immediately after lecture with an inscription upon her breast in a faire character For undutifull abusive & reviling speeches & carriages to her naturall mother & to give bond for her good behavio<sup>r</sup> till the next Court of this County 10<sup>li</sup> herselfe & 5<sup>li</sup> apeice two sureties & to pay Fees of Court standing committed &<sup>a</sup> the s<sup>d</sup> Sarah Scott as principall in 10<sup>li</sup> & Nathan<sup>li</sup> Greenwood & Thomas Bill as Sureties in 5<sup>li</sup> apeice acknowledged themselves respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Sarah Scott should bee of good behavio<sup>r</sup> till the next Court of this County & should then appeare.

LAWTONS Sent<sup>a</sup>

Henry Lawton being presented for Forgery perjury & endeavouring to subborn Witnesses of all which hee was convict in Court The Court Sentances him to stand in the pillory in Boston three severall lecture dayes with a paper fastned to the Pillory with this inscription this is for Forgery perjury & endeavoring to subborne Witnesses begining the next lectureday according to Law & to

render double damages to the party wronged & to bee disabled to give any Evidence or Verdict to any Court or Magistrate paying Fees of Court & charges of prosecution for the severall presentments Standing committed & the s<sup>d</sup> Lawton appealed from the sentence of this Court to the next Court of Assistants & himselfe as principall in five hundred pounds of N: England mony & m<sup>r</sup> Habbabbub Glover & John Walley as Sureties in two hundred & fifty pounds apeice acknowledged themselves respectively bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Henry Lawton shall prosecute his appeale from the Sentence of this Court at the next Court of Assistants to Effect & that in the meane time hee shalbee of good behavior

[A further development of the ketch Recovery case of Lawton v. Bonner, for which we now have so many entries that the reader must be referred to the Index. The evidence in the files shows that in September, 1672, Lawton had approached Francis Sciddall (one of the servants whom Ashton had procured at Liverpool and at that time indented servant to Michael Holmes) and pressed him to swear to things which Sciddall knew to be untrue, and so refused (S. F. 1221.89). He also forged a deposition by John Billington, who disowned it (S. F. 1341.45). Lawton's "reasons of appeale" from this sentence (S. F. 1221.27; F.B. pp. 352-80) are rambling and unconvincing: mainly devoted to an attack on the character of John Billington. Bonner's "Answers to Henry Lawton his prolix & pretended Reasons of Appeale" are more convincing; he reviews facts which he alleges came out in court, to the effect that Lawton not only wrote the Billington deposition and forged another, but had received his sea-chest with contents intact. The legal part of the plea is of interest:

" . . . And whereas he craves y<sup>e</sup> Liberty of a Stranger to present his Evidences for defence Answer the Appealant is noe stranger for he hath lived some yeares in the Country & from hence hath received his Employ & cannot upon his good abbearance bee legally rejected as an inhabitant, however what hee pleads for is absolutely contrary to law title Appeal Sect. 3. in all cases of Appeal the Court appealed to shall judge the case according to former Evidence, & noe other &c. Now I doubt not but this hono<sup>rd</sup> Court & Gentlemen of the Jury will finde by the Evidences the severall presentm<sup>ts</sup> sufficiently proved for either of which crimes the Appealant deserveth as a high a censure as hee now lieth under, & though wee haue noe perticuler law which speaks of

perjury or suborning Witnesses yet the word of god is cleere for the punishm<sup>t</sup> of such, as in 19, deutrinony: 16, 18, 19, verses, 6, levit: 5, verse. which by o<sup>r</sup> law is to bee the judge, in defect of a Law in any perticuler case. . . .”

The appeal evidently was not allowed; and from the evidence at hand it seems that Lawton, although the main details of his account of the voyage had been corroborated by Henry Ashton and several members of the crew, had been overzealous in obtaining evidence against Bonner, and that in order to convince the Court he had not hesitated to manufacture evidence of his wrongs.

But we are not yet done with Lawton's turn of fortune. At this same session of 29 July, 1673, as we have already seen, Lawton was defendant against Bonner for non-performance of his engagement to accept the award of Joyliffe, Peter Lidget and Thomas Deane, dated January 20, 1672 (Records of Court of Assistants, iii. 251). The jury found for Bonner 200*l* and costs. Gibbs and Lawton appealed, and their appeal was heard before the Court of Assistants on September 2, 1673, the same day that Bonner “declared he did attaynt the jury” for confirming a judgment of the Cambridge court in favor of Lawton. Notwithstanding, the Court of Assistants sustained the lower court and found for Bonner, with additional costs. After which, at the next session, Peck starts a new suit against Lawton. See below, p. 315.]

#### GIBBS fined 20<sup>s</sup>

Benj<sup>a</sup> Gibbs being presented for high asseverations & profane wishes against himselfe for things that were not true. The Court Sentences him to pay twenty shillings in mony fine to the County with charges of prosectuion & Fees of Court Standing committed &<sup>a</sup>

#### HENCHER Sent<sup>a</sup>

Daniell Hencher presented for fighting & breaking the peace The Court Sentences him to pay ten shillings in mony fine to the County & to give in [ 155 ] bond for his good behavio<sup>r</sup> till the next Court of this County of 5<sup>li</sup> him selfe & 50<sup>s</sup> apeice two Sureties paying fees of Court & charge of prosecution standing committed &<sup>a</sup> accordingly the s<sup>d</sup> Daniell Hencher as principall in 5<sup>li</sup> & Clemont Salmon & John Bull as Sureties in 50<sup>s</sup> apeice acknowledged them selves bound to the Treasuro<sup>r</sup> of the County.

Execucion issued for Tho. Voss ags<sup>t</sup> Hencher; & O<sup>r</sup> Silvester for 6<sup>s</sup> 21. 8. 73



SILVEST<sup>r</sup> Sent<sup>a</sup>

Richard Silvester presented for fighting & breaking the peace The Court Sentences him to pay ten shillings in mony fine to the County & fees of Court w<sup>th</sup> charge of prosecution & to give in bond of 5<sup>li</sup> himselfe & 50<sup>s</sup> a peice two sureties for his good behavio<sup>r</sup> till the next Court of this County & his appearance then standing committed &<sup>a</sup> The s<sup>d</sup> Ri: Silvester as principall in 5<sup>li</sup> & John Sandys & John Ricks as Sureties in 50<sup>s</sup> apeice acknowledged themselves accordingly bound to the Treasuro<sup>r</sup> of the County

PASON's presentm<sup>t</sup>

Edward Pason presented for profanation of the Sabbath The presentment not being proved fell The Court accepting of his Answer declaring the necessity of w<sup>t</sup> was done

## MANNING's Liberty.

Further Liberty is granted to m<sup>rs</sup> Anne Manning untill y<sup>e</sup> next Court of this County to bring in the Inventory of her Father m<sup>r</sup> Richard Parker his Estate

WHEELERS Sent<sup>a</sup>

Mary the wife of Joseph Wheeler presented for disorderly carriages in the South meeting house in Boston on the Sabbath day in hunching Rebecca Bulley in the publique worship of god, of which shee was convict in Court The Court Sentences her to pay twenty shillings in mony fine to the County with fees of Court & charge of prosecution one third part & to give in bond for her good behavio<sup>r</sup> till the next Court of this County of 5<sup>li</sup> her selfe & 50<sup>s</sup> apeice two sureties & then to appear standing committed &<sup>a</sup> Joseph Wheeler as principall for his wife in 5<sup>li</sup> & W<sup>m</sup> Dawes & Tho: Moore Sureties in 50<sup>s</sup> apeice acknowledged themselves accordingly bound to the Treasuro<sup>r</sup> of the County.

SALTERS Sent<sup>a</sup>

Elizabeth the wife of Jabesh Salter presented for disorderly carriages in the South meeting house in Boston on the Sabbath day in hunching Rebecca Bully in the publique worship of god of which shee was convict in Court. The Court Sentences her to pay ten

shillings in mony fine to the County with fees of Court & charges of prosecution — one third part — & to give in bond for her good behavio<sup>r</sup> till the next Court of this County of 5<sup>li</sup> her selfe & 50<sup>s</sup> apeice two Sureties & then to appear standing committed &<sup>a</sup> Jabesh Salter as principall for his wife in 5<sup>li</sup> & John White & John Cowell as Sureties in 50<sup>s</sup> apeice acknowledged themselves bound to the Treasuro<sup>r</sup> accordingly. [ 156 ]

SALTERS Sent<sup>a</sup>

Mehetable Salter presented for disorderly carriages in the South meeting house in Boston upon the Sabbath day in hunching Rebecca Bully in the publique worship of god of which shee was convict in Court The Court Sentances her to pay ten shillings in mony fine to the County with Fees of Court & charges of prosecucion one third part & to give in bond for her good behavio<sup>r</sup> till the next Court of this County of 5<sup>li</sup> her selfe & 50<sup>s</sup> apeice two sureties & then to appeare standing committed &<sup>a</sup> W<sup>m</sup> Salter as principall for his Daughter Mehetable in 5<sup>li</sup> & Jabez Salter & Ambros Daws as Sureties in 50<sup>s</sup> apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke accordingly.

BELCHERS Sent<sup>a</sup>

John Belcher presented for Idleness & profane & wicked speeches of which hee was convict in Court: The Court Sentences him to bee whipt with fifteen stripes or to pay five pounds in mony fine to the County with fees of Court & charges of prosecution & to give in bond for the good behavio<sup>r</sup> of 10<sup>li</sup> himselfe & 5<sup>li</sup> apeice two sureties till the next Court of this County & then to appeare standing committed &<sup>a</sup> & the s<sup>d</sup> John Belcher as principall in 10<sup>li</sup> & Gregory Belcher & Joseph Belcher as Sureties in 5<sup>li</sup> apeice acknowledged themselves bound to the Treasurer of the County of Suffolke accordingly.

NORMAN Fined

Thomas Norman presented for abusive carriages in the house of Cap<sup>t</sup> William Hudson in Boston, hee Owned in Court that hee was in the Company when they broke a forme & burnt it but saide they paide for it: The Court upon due consideracion of the case Sentenced him to pay twenty shillings in mony as a fine to the County with Fees of Court & charge of prosecution standing committed &<sup>a</sup> upon his humble petition The Court remitted halfe his fine.

NEWCOMB admonish<sup>t</sup>

Andrew Newcomb presented for hoyseing his Sailes to dry them on the Sabbath day, which hee Owned in Court but pleaded necessity there haveing been such a long Season of wet weather foregoing upon due consideracion of the case The Court Sentenced him to bee admonished in open Court & to pay Fees of Court standing committed &<sup>a</sup>

## Fox admonished

Nath<sup>11</sup> Fox presented for the same. Owned it in Court & pleaded the necessity as aboue: Vpon due consideracion of the case The Court Sentenced him to bee admonished in open Court & to pay Fees of Court standing committed &<sup>a</sup> [ 157 ]

## ALLEN admonished

Hope Allen presented for tending & drying his leather on the Sabbath day, which hee Owned in Court pleading the necessity of it. Vpon due consideracion of the case The Court Sentenced him to bee admonished & to pay fees of Court standing committed &<sup>a</sup>

DOUBLEDEE admonish<sup>d</sup>

Roger Doubleddee presented as aboue, pleaded the necessity of it: Vpon due consideracion of the case The Court Sentenced him to bee admonished & to pay fees of Court standing committed &<sup>a</sup>

HARRIS'S Sent<sup>a</sup>

James Harris complained of for disorderly carriage in his family neglecting & refusing to provide for them & for quarrelling with his wife, of which hee was convict in Court. The Court Sentenced him to bee whipt with ten stripes or to pay twenty shillings in Mony fine to the County & to give in bond for his good behavio<sup>r</sup> of 5<sup>11</sup> himselfe & 50<sup>s</sup> apeice two sureties paying fees of Court & charge of prosecucion standing committed &<sup>a</sup> Vpon his humble petition the Court remitted halfe his fine and the s<sup>d</sup> James Harris as principall in 5<sup>11</sup> & Jacob Eliott & John Sanford as Sureties in 50<sup>s</sup> apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of the County accordingly.

PROSSERS Sent<sup>a</sup>

Roger Prosser complained of & convict in Court for breach of the peace in strieking of John Spry & breaking his head: The Court Sentenced the s<sup>d</sup> Prosser to pay twenty shillings in mony fine to the County with charge of prosecution & fees of Court standing committed &<sup>a</sup>

SPRY Fined 6<sup>s</sup> 8<sup>d</sup>

John Spry convicted in Court of breaking the peace & fighting with Roger Prosser: The Court Sentenced him to pay six shillings & eight pence in mony as a fine to the County with fees of Court & charge of prosecution standing committed &<sup>a</sup>

LORDANS Sent<sup>a</sup>

Joseph Lordan presented for picking of locks & stealing mony from Serj<sup>t</sup> Samm: White of Weymouth of which hee was convict in Court, & haveing returned the mony stoln The Court Sentenced him to pay to the s<sup>d</sup> White three pound in mony (besides the mony restored) & to pay fees of Court standing committed &<sup>a</sup>

NOAKES Fined 5<sup>li</sup>

Robert Noakes bound over to this Court to answer for his pound breach of which hee was convict in Court: The Court Sentenced him to pay five pounds in mony fine to the County with charges of prosecution & Fees of Court standing committed &<sup>a</sup> The saide Noakes appealed from the Sentance of this Court to the next Court of Assistants & himselfe as principall in 10<sup>li</sup> & John Tapping & William Hoare as Sureties in 5<sup>li</sup> apeice acknowledged themselves respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion [ 158 ] that the s<sup>d</sup> Robert Noakes should prosecute his Appeale from the Sentance of this Court at the next Court of Assistants to Effect & that in the meane time hee should bee of good behavio<sup>r</sup>

[ "Pound breach" was a serious offense in New England, as in any agrarian society. A law of 1645 provided that every town and village should maintain "one sufficient Pound or more . . . for the Impounding of all such Swine and Chattel as shall be found in any Corn field or other inclosure," there to be held until the person damaged by the stray cattle be satisfied by its owner. Pound breach was defined by a law of 1647



as an owner's "rescuing" his animal from the pound before satisfying the damaged party, or a third party removing the animal without the owner's consent. It was subject to a fine of 5*l*, or public whipping "not exceeding twenty stripes," in addition to penalties for theft if the rescuer were not the animal's owner (The General Laws and Liberties of the Massachusetts Colony, 1672, pp. 124-25). Part of the testimony (S. F. 1209.4), Noakes' Reasons of Appeale (S. F. 1209.2), and the Answer thereto (S. F. 1209.3), follow:

William Pollard aged 62. yeares & Bartholmew Sutton aged 45 or thereabouts testifieth that they heard Robert Nocks say that if hee did breake the pound it was but five pounds. Owned the 21<sup>th</sup> of July 1673. by Robert Noakes before John Leverett Gov<sup>r</sup>

Owned in Court. 5. 6. 73 Attests J. A. C

Robert Noakes principall in 10<sup>li</sup> John Tappin & Sammuell Johnson as Sureties 5<sup>li</sup> apiece Owned themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke that Robert Noakes shall appear at the next County Court to bee holden in Boston to Answer for the pound breach hee made in taking out his horse without leaue, being impounded: & suspicion of his breaking open the pound to let other horses out & for abuseing old Goodwife Cullimore the pound keepers wife by bad & unworthy language. & that hee abide the Order of the Court

Owned by them the 21. July: 1673.

before John. Leverett Gov<sup>r</sup>

Robert Noakes Owned in Court. 2. August. 1673 that hee desired Zachariah Phillips to goe to Goodwife Cullimore to fetch the Key of the pound that soe hee might put in a mare, the w<sup>ch</sup> hee did, & when the dore was open hee the s<sup>d</sup> Noakes tooke out his own horse.

as Attests Jsaac Addington Cler.

. . . true Coppie . . . Jsaac Addington Cler

Robert Noakes Resons of Appeale From the Judg<sup>t</sup> of the Last County Courtt:

Imp<sup>r</sup>s: My First Reson why J appealed from the sentance of the Honored Courtt is Because J was Sentanced Contrary to Law hauing neuer been guilty of any such thing that was Laid to my Charge, there being no [wit]ness against me thatt Euer J broke pound, and thatt my going into the pound when the p[ound door] Was Opend by Zackry Phillips Can bee a pound Breach Cannot no<sup>r</sup> J hope Wi[ll not bee] Counted A pound Breach though J fetched my horse out of [torn] att that time and Also noe p<sup>r</sup>son Dammnified neither y<sup>e</sup> pound keeper nor y<sup>e</sup> p<sup>r</sup>son y<sup>t</sup> putt my Horse into y<sup>e</sup> pound but y<sup>e</sup> mony paid by another p<sup>r</sup>son hauing his horse or Mare by me pounded, & also y<sup>e</sup> pound keeper owning herselfe fully sattisfied for y<sup>e</sup> same; But the time that J am Charged w<sup>th</sup> Breaking the Pound J was A bed & Can safely take my oath of itt if Called theretoo:

2dly: Because noe Wittnes Came Jn Against me the Law of God [&] man Saying Expresly that no man shall bee Condemned or sentensed but by y<sup>e</sup> mouth of two or three Wittneses, And being noe Wittneses against me and nott being in y<sup>e</sup> Least Measure Guilty of that w<sup>ch</sup> [is] Laid to my Charge y<sup>t</sup> J was fined For y<sup>e</sup> Appellantt hopes the Hono<sup>rd</sup> [Court] Will [see] Cause to Cle[ar]e y<sup>e</sup> poo<sup>r</sup> Appellant from the fine [torn] Hono<sup>r</sup>d Courtt [torn]

Answers to Robert Nokes his pretended Reasons of Appeale from the Sentence of the County Court in Boston

Whereas hee saith hee was Sentenced contrary to law there being noe Witness against him: The Appealant doth most unworthily & abuseivly reflect on the Court Appealed from, & seemes to bee very forgetfull of his own acknowledgment in Court (which is of as much force against him as twenty Witnesses) where hee Owned that hee spake to Zechariah Phillips to fetch the Key from the pound keeper under a pretence of his impounding of a Mare, which hee had taken up, & when the pound dore was opened hee tooke out his own horse & that without the pound keepers Knowledge or paying according to Order; which by o<sup>r</sup> law title pound breach. sect: 2. is noe less then pound breach which saith whosoever shall by any way or meanes convey cattle out of pound &<sup>ca</sup> & therefore the penalty of five pounds justly inflicted upon the Appealant: there is also two positieue Witnesses which say. the Appealant did giue out words which occasion just Suspicion, in that, hee saide; if hee did break the pound it was but five pounds soe if the Gentlemen of the Jury bee pleased well to weigh & consid<sup>r</sup> the Appealants acknowledgement in Court with the other concurring testimonies together with the law title pound breach sect. 2. J doubt not but they will see cause to confirme the Sentence of the County Court.

Jn behalfe of & by Order of  
the County Court of Suffolke  
Jsaac Addington Cler

The appeal was not allowed.]

GOLDS bond forfeited.

Benjamin Gold, bound over to this Court to answer for his stealing of mony from Sammuell Jackson, Neither principall nor Surety appearing upon due calling both their bonds were declared forfeited.

JACKSONS bond forfeited & remitted.

Sammuell Jackson bound to presecute Benjamin Gold at this Court, Vpon non appearance his bond was declared forfeited; afterwards appearing & giving the reason thereof to the Court, they were pleased to take of the forfeiture.

TRINGO<sup>s</sup> Sent<sup>a</sup>

John Tringo committed to prison for being taken in the house of Hope Husten at unseasonable houres in the night & for suspicion of bad carriages towards the s<sup>d</sup> Husten; which could not legally bee proved against him. The Court considering his suffering by imprisonment Sentence him to give in bond for the good behavio<sup>r</sup> till the

next Court of this County: in 5<sup>li</sup> himselfe & 50<sup>s</sup> apeice two Sureties & to pay charges of prosecucion with Fees of Court standing committed &<sup>a</sup> the s<sup>d</sup> John Tringo Edward Jones & John Stanberry acknowledged themselves accordingly bound to the Treasuro<sup>r</sup> of the County.

#### JENNERS Fined

Thomas Jenners bound over to this Court to Answer for receiving six thousand of pipe staues on board his Ship the John & Thomas without a certificate from the veiwers or Searchers of Staues contrary to law of which he was convict in Court. The Court Sentenced the s<sup>d</sup> Jenners to pay according to law onely respited the fine till further Order paying charge of prosecution w<sup>th</sup> Fees of Court.

#### PARKMAN Fined

Elias Parkman bound over to this Court to Answer for receiving seven thousand of pipe staues on board his Ship the Jane & Sarah without a certificate from the veiwers or Searchers of pipe staues contrary to Law: of which he was convict in Court. The Court Sentenced the s<sup>d</sup> Parkman to pay according to law, onely respited the fine till further Order paying charge of prosecucion with fees of Court.

#### DAVIS<sup>s</sup> bond forfeited

Sammuell Davis bound over to this Court to Answer for selling beere to Indians contrary to law: and vpon his non appearance after due calling The Court declared his bond forfeited.

#### WILMOTT Fined 5<sup>li</sup>

Nicholas Wilmot bound over to this Court to Answer for selling strong beere contrary to law & James Brading [ 159 ] being his Surety. both principall & Surety being duely called & not appearing The Court declared both theire bonds forfeited. The s<sup>d</sup> Wilmott afterwards appearing & owning in Court that hee had sold beere contrary to Law The Court Sentenced him to pay five pounds in mony fine to the County according to law with charge of prosecucion & fees of Court standing committed &<sup>a</sup> & vpon his payment as aboues<sup>d</sup> the forfeiture of his bond to bee discharged.

SHOAR's bond forfeited.

Jonathan Shoare bound over to this Court to Answer for his selling or delivering a quart of strong beere to an Indian Vpon his non-appearance after due calling The Court declared his bond forfeited.

SAMM: Indian whip't

Sammuell an Indian committed to prison for carrying three quarts of strong liquors to the Castle with which himselfe & divers other Indians were drunck, which hee Owned in Court The Court Sentenced the s<sup>d</sup> Sam<sup>l</sup> to bee whipped with ten stripes paying Fees of Court & charges of prosecution standing committed &<sup>a</sup>

KEENE Fined 5<sup>li</sup>

John Keene, bound over to this Court to answer for his selling of wine without Licence of which hee was convict in Court The Court Sentenced him to pay five pounds in mony fine to the County with Fees of Court standing committed &<sup>a</sup>

COLSTON's Sent<sup>a</sup>

Joseph Colstone presented for committing Fornicacion w<sup>th</sup> Jehoshabath Bates: The Court Sentenced him to pay two shillings in mony per weeke towards the maintenance of the Childe during this Courts pleasure with charge of prosecucion & fees of Court standing committed till hee give security to performe the Sentence.

HUDSON LEVERETT Sent<sup>a</sup>

Hudson Leverett bound over to this Court to Answer for his rash indiscreete & dangerous speeches of which hee was convict in Court: the Court Sentenced him to pay one hundred pounds in mony fine to the County & to bee imprisoned for one month & to pay Fees of Court & charge of prosecucion.

Committee for Cap<sup>t</sup> THO: CLARKE Esq<sup>r</sup>  
& MARKE HANNS adm<sup>rs</sup>

Vpon the motion of the Guardians to the children of Marke Hanns, & Cap<sup>t</sup> Thomas Clarke Esq<sup>r</sup> to this Court, desiring a Committee to consider of the differences betwixt them: the aboues<sup>d</sup> Thomas Clarke



Esq<sup>r</sup> chose m<sup>r</sup> Humphry Davey & m<sup>r</sup> John Richards & the abouesaide guardians (viz<sup>t</sup> m<sup>r</sup> Peter Brackett & m<sup>r</sup> Thomas Brattle) chose m<sup>r</sup> John Wensley & m<sup>r</sup> Anthony Checkly, the Court appointed m<sup>r</sup> John Joyliffe as a fifth man, who are to consid<sup>r</sup> as abouesaide, & determin all matters of difference betwixt the s<sup>d</sup> parties (except what hath been already decided in a course of law) the parties aboues<sup>d</sup> haveing engaged themselves upon theire creditts to stand to the Award of the aboues<sup>d</sup> Committee or any three of them as a finall determinacion. vide p. 394 [ 160 ]

#### Freemen Sworn

M<sup>r</sup> Elisha Cooke, John Pool, John Clarke, John Buttolph, John Vsher Paul Batt John Drury Sam<sup>l</sup> Bridge & Robert Mason all of Boston, tooke the Oath of freedom of this Colony.

Vpon due proclamacion made William Middleton was discharged from his bonds of good behavio<sup>r</sup>

#### Court Order to y<sup>e</sup> Marshall about hides

The Court Order: Marshall Richard Wayte to deliver all the hides seized by him on board the Catch John & Jacob John Walley master unto m<sup>r</sup> John Wally & m<sup>r</sup> Jacob Jesson, Attournies of Francis Bill (except the ten hides which were seized by the veiwers for want of Sealing) the s<sup>d</sup> m<sup>r</sup> Wally & Jesson paying the Marshall his charges in seizing & securing them:

#### Committee for bridge att Manaticott

In Answer to the petition of the Town of Brantery the Court Orders & appoints Cap<sup>t</sup> Hopestill Foster Deacon Will<sup>m</sup> Parcks & leif<sup>t</sup> John Holbrooke as a Committee to repaire to Brantery & to veiw the bridge standing over Manaticott River, & to make return of the condicion thereof & what they judge most suitable to bee done about it to the next Court of this County.

#### X<sup>th</sup> PHER WEBBS liberty restored

In Answer to the peticion of Christopher Webb of Brantery The Court remits the penalty laide upon him by a former Court of this County & restore him to his former liberty.

Hingham Commission<sup>rs</sup>

Cap<sup>t</sup> Joshua Hubbard L<sup>t</sup> John Smith & Ensigne John Thaxter were appointed Commission<sup>rs</sup> for the Town of Hingham to end small causes for the yeare ensuing.

## PLUMBLY &amp; COPELANDS discharge.

Vpon certificate from Cap<sup>t</sup> Richard Brackett Alexand<sup>r</sup> Plumbly & Lawrence Copeland of Brantery were discharged from Ordinary treinings.

HARBO<sup>rs</sup> discharge

Vpon Like certificate John Harbour sen<sup>r</sup> of Brantery was discharged from Ordinary treinings paying to the Company six shillings per yeare

## GROVERS discharge

John Grover of Rumny Marsh was discharged from Ordinary treinings with the consent of Cap<sup>t</sup> Tho: Clarke paying to the Company six shillings per yeare.

In Answer to the petition of John Jones The Court refers this petition to Edward Tyng Esq<sup>r</sup> & Tho: Clarke Esq<sup>r</sup> to hear the parties & to determine therein as they shall see most meete.

This Court dissolved Aug<sup>o</sup> 5<sup>th</sup> 1673. [ 161 ]

## MAVEY to HUTCHINSON

Robert Mavey of Boston in New England Marriner personally appearing before the Worp<sup>11</sup> Simon Bradstreete Esq<sup>r</sup> & Edward Tyng Esq<sup>r</sup> Assistants Septemb<sup>r</sup> 13<sup>th</sup> 1673 acknowledged a judgment against himselfe & Estate to m<sup>r</sup> Eliakim Hutchinson of s<sup>d</sup> Boston Merchant for thirty one pounds three shillings & six pence in mony.

as Attests Isaac Addington Cler.

## MORSE to BRATTLE

John Morse of the Town of Portsmouth in the County of Dover & Portsmouth, blacksmith, personally appearing before the Worpp<sup>11</sup> Thomas Danforth Esq<sup>r</sup> & Edward Tyng Esq<sup>r</sup>, Assistants, Septemb<sup>r</sup> 16<sup>th</sup> 1673 acknowledged a judgment against himselfe & Estate to Thomas Brattle of Boston Merchant for fourteen pounds five shillings & eleven pence in mony.

as Attests Isaac Addington Cler. [ 162 ]

At a County Court held at Boston Octobr 28<sup>th</sup> 1673

Present

SIMON BRADSTREET Esq<sup>r</sup>

EDW<sup>d</sup> TYNG

W<sup>m</sup> STOUGHTON } Esq<sup>rs</sup>

Grand jury the same w<sup>th</sup> the former Court.

Jury of Tryalls Sworn

Jn<sup>o</sup> Pincheon

Sam<sup>ll</sup> Scarborough

Tho: Tolman

Alex<sup>a</sup> Marsh

L<sup>t</sup> Ri: Way

W<sup>m</sup> Read

Edw: Wilder

W<sup>m</sup> Hearsy

Isaac Bullard

In<sup>o</sup> Richards

In<sup>o</sup> Morss

Ioseph How

Ioseph Webb

[HOARE v. ATKINSON et al.]

William Hoare plaint. against Theodo<sup>r</sup> Atkinson sen<sup>r</sup> & John More Defend<sup>ts</sup> The pl<sup>t</sup> withdrew his accion.

[CARVER v. WRIGHT *et al.*]

Robert Carver plaint. against Thomas Wright Robert Johnson & Manning & Phillip Watts Defend<sup>ts</sup> according to Attachm<sup>t</sup> Dat. 7<sup>br</sup> 8<sup>th</sup> 1673 the pl<sup>t</sup> withdrew his accion.

[PECK v. LAWTON et al.]

Thomas Peck plaint. against Henry Lawton Ralph Fletcher & John Bonner or either of them Defend<sup>ts</sup> in an accion of the case for breach of Charter party bearing date the 23<sup>th</sup> of August 1670 & deteining his quarter part of the Catch Recovery therein mentioned aboue twelve months after expiracion of s<sup>d</sup> Charter party being neere Fifty pounds in mony to the damage of the plaintiffe & all other due damages according to Attachm<sup>t</sup> Dat. Octobr 21<sup>th</sup> 1673. . . . The Jury . . . founde for the Defend<sup>ts</sup> costs of Court: The plaint appealed from the Judgment of this Court to the next Court of Assistants, & the s<sup>d</sup> Thomas Peck principall in ten pounds & John Williams & Rob<sup>t</sup> Carver as Sureties in five pounds apeice acknowledged themselves respectively bound to . . . prosecute his Appeal . . .

[See note to Lawton's Sentence, above, pp. 303-4.]

SALTER ags<sup>t</sup> DAVIS

Jabez Salter plaint. against Sammuell Davis Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. 8<sup>th</sup> Octob<sup>r</sup> 1673. The plaint. withdrew his accion.

SANDYS ags<sup>t</sup> MOTT

John Sandys Attourney of Anne Manning sole Executrix of the Last will & testament of Richard Parker Late of Boston deceased plaint. against Nathan<sup>l</sup> Mott Defend<sup>t</sup> in an accion of debt of about Sixty five pounds due by booke & due damages according to Attachm<sup>t</sup> Dated Iuly 25<sup>th</sup> 1673. . . . The Iury . . . founde for the plaint. Sixty one pounds seven Shillings & costs of Court being 35<sup>s</sup> 10<sup>d</sup>

Execucion issued for 63. 2. 10. Nov<sup>r</sup> 6 1673. [ 163 ]

RISCO ags<sup>t</sup> MILLER

Robert Risco plaint. against Thomas Miller Defend<sup>t</sup> in an accion of the case for unjustly attaching the brigantine called the good hope of Albemarle, whereof the s<sup>d</sup> Risco is Master, whereby hee is extremely damnified & his Owners by severall Attachments Laide upon the aforesaide Brigantine called the good hope of the s<sup>d</sup> Albemarle as by Account shall appeare to the vallue of One hundred & fifty pounds & all due damages according to Attachm<sup>t</sup> Dat. August: 2: 1673. . . . the Iury . . . founde for the Defend<sup>t</sup> costs of Court being six Shillings & ten pence.

Execucion issued for 6<sup>s</sup> 10<sup>d</sup> Nov<sup>r</sup> 11 1673

[ See above, pp. 277-85, 288, 299.]

PARKER ags<sup>t</sup> CORBYN

Noah Parker Son of Iohn & Iane Parker, plaint. ags<sup>t</sup> Clement Corbin Defend<sup>t</sup> in an accion of the case for withholding three fourth parts of forty two acres or thereabouts of land, which doth belong to the s<sup>d</sup> Noah Parker himselfe & as hee is heire to his brother John Parker deceased, the s<sup>d</sup> Land being given to the abouenamed John & Noah as may appeare by a Deed of gift bearing date in the yeare 1646 & all other due damages according to Attachm<sup>t</sup> Dat: Septemb<sup>r</sup> 13<sup>th</sup> 1673. . . . The Iury . . . founde for the Defend<sup>t</sup> costs of Court being ten Shillings & nine pence.

Execucion issued for 10<sup>s</sup> 9<sup>d</sup> Nov<sup>r</sup> 11 1673



LONG ags<sup>t</sup> FRENCH

Zechariah Long plaint. against Phillip French Defend<sup>t</sup> in an accion of debt of seven pounds in mony or thereabouts due for freight & charges of Eight bailes of Canvas & three hogs heads of Brandy & other disburstm<sup>ts</sup> due for s<sup>d</sup> goods brought from Rochell upon the Acco<sup>t</sup> of the s<sup>d</sup> French & delivered to the s<sup>d</sup> French at Boston as will more cleerely appeare by the Acco<sup>t</sup> of the same being greatly to the damage of the plaintiffe & all other due damages according to Attachm<sup>t</sup> Dat. 7<sup>br</sup> 16<sup>th</sup> 1673. . . . The Iury . . . founde for the Defend<sup>t</sup> costs of Court.

BERNARD ags<sup>t</sup> COCK

Bertholmew Bernard plaint. ags<sup>t</sup> Edward Cock Defend<sup>t</sup> in an accion of the case for the s<sup>d</sup> Cock his not paying of the Summe of twenty pounds currant mony of New England unto the s<sup>d</sup> Bernard due by his Engagement or specialty bearing date the twenty ninth day of Iuly 1673, under his hand & Seal forfited by the s<sup>d</sup> Cock his [ 164 ] Non performance of an award of Richard Collicot Hump<sup>r</sup> Hodges & Iohn Hayward bearing date the 22<sup>th</sup> of August 1673 relating unto the aforesaide Specialty with other due damages according to Attachm<sup>t</sup> Dat. Septemb<sup>r</sup> 29<sup>th</sup> 1673. . . . The Iury . . . founde for the plaint. the Forfiture of the Engagem<sup>t</sup> being twenty pounds in mony damage & costs of Court. The Magistrates chancered this Engagem<sup>t</sup> to six pounds in mony & costs of Court being: 22<sup>s</sup>

HOLBROOKE ags<sup>t</sup> MASON

L<sup>t</sup> Iohn Holbrooke, assigne to the widow Gatcliffe Executrix to the Last will of her late husband Thomas Gatcliffe deceased plaint. ags<sup>t</sup> Robert Mason Defend<sup>t</sup> The plaint. withdrew his accion

JOY ags<sup>t</sup> ADKINS

Anne Joy of Hingham widow plaint. ags<sup>t</sup> Thomas Adkins of Boston Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Iuly: 26. 1673. The plaint. withdrew her Accion.

SCOTTOW ags<sup>t</sup> FELTON

L<sup>t</sup> Joshua Scottow plaint. against Benjam<sup>n</sup> Felton prison keeper of Salem Defend<sup>t</sup> in an accion of the case for releasing out of prison

the body of Thomas Green late committed to the s<sup>d</sup> Felton his charge upon Execucion issued out from the County Court held at Boston the 25<sup>th</sup> day of the sixth month 1671 for the summe of eight pounds twelve Shillings & six pence paiable in Merchantable cod fish at twenty eight Rialls per quintall due upon bill about twenty yeares & all due damages according to Attachm<sup>t</sup> Dat. Septemb<sup>r</sup> 5<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. eight pounds in Merchantable cod fish & costs of Court 28<sup>s</sup> 6<sup>d</sup> The magistrates respited this judgm<sup>t</sup> till the next Court of this County.

Execucion issued 29: 2<sup>mo</sup> 1674:

#### HISKETT ags<sup>t</sup> PAINE

George Hiskett plaint. against Jn<sup>o</sup> Paine Defend<sup>t</sup> in an accion of the case for not performing & makeing good his bargain concerning a peice of land which hee sold to the s<sup>d</sup> Hiskett, as appeares by Deed of Sale which land the s<sup>d</sup> Hiskett dwelleth upon, but a considerable part of y<sup>e</sup> s<sup>d</sup> Land being wanting, which the s<sup>d</sup> Paine hath oftentimes promised the s<sup>d</sup> Hiskett to make good his bargain & saith that hee hath land [ 165 ] adjoining to it to make good his bargain, but neglecteth to doe it to the plaintiffes great damage & all other due damages according to Attachm<sup>t</sup> Dat. Septemb<sup>r</sup> 16<sup>th</sup> 1673. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

#### BARTHOLMEW &<sup>a</sup> ags<sup>t</sup> ASHTON

William Bartholmew & James Everill or either of them plaint<sup>s</sup> against Henry Ashton Defend<sup>t</sup> in an accion of the case for that the s<sup>d</sup> Ashton is possessing himselfe of a house & ground neere the Water mill in Boston, w<sup>ch</sup> s<sup>d</sup> house & ground is bound over for security to the plaint<sup>s</sup> to save them harmeless from a bond given in to the County Treasuro<sup>r</sup> of Suffolke, by order of Court from Rebecca Greene while a widow for her true administracion upon the Estate sometime of her husband Greene deceased, out of which Estate was ordered to her Childe Rebecca Greene, by the Court two hundred pounds; the loss or taking away of which aboues<sup>d</sup> security is to the plaintiffes damage One hundred & twenty pounds in mony & other due damages according to Attachm<sup>t</sup> Dat. July 30<sup>th</sup> 1673. . . . The Jury . . . founde for the Defend<sup>ts</sup> costs of Court.

[ A copy of the warrant is in S. F. 1239.]

LEVERETT ags<sup>t</sup> HUDSON

Hudson Leverett plaint. ags<sup>t</sup> Cap<sup>t</sup> William Hudson Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Octob<sup>r</sup> 23. 1673 The plaint. withdrew his accion.

RUSSELL ags<sup>t</sup> HUDSON

Cap<sup>t</sup> Thomas Russell plaint. ags<sup>t</sup> Cap<sup>t</sup> William Hudson Defend<sup>t</sup> in an accion of debt for the non paiement of twelve pounds five Shillings in mony due by bill bearing date the twenty fifth day of may 1673 with due interest & all other due damages according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 23 1673. . . . The Jury . . . founde for the plaint. twelve pounds five Shillings in mony according to bill & costs of Court being twenty five Shillings & two pence.

Execucion issued Nov<sup>r</sup> 12: 1673.

HUDSON ags<sup>t</sup> LEVERETT

Cap<sup>t</sup> William Hudson plaint. ags<sup>t</sup> Hudson Leverett Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 23<sup>th</sup> 1673. The plaint. withdrew his Accion. [ 166 ]

BRACKENBURY ags<sup>t</sup> WELCH

John Brackenbury Attourney to Job Brown, the Sonn of Heugh Brown of Boston plaint. against Thomas Welch of Charlestown sometime guardian to Job Brown Defend<sup>t</sup> in an accion of the case for withholding a debt of thirty eight pounds or thereabouts being for part of houseing & Land in Boston which was the proper Estate of Job Brown & Sold by his then guardian unto Sammuel Ward of Boston & refuseing to pay the s<sup>d</sup> Summe to the s<sup>d</sup> Attourney although Lawfully demanded & also for withholding other goods or household stuffe left by his Father or the Courts ord<sup>r</sup> with all approved damages according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 20<sup>th</sup> 1673: . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

PINCHEON ags<sup>t</sup> COLLECOT

John Pincheon plaint. ags<sup>t</sup> Richard Collicot Defend<sup>t</sup> in an accion of debt for not paying a debt of eleven pounds seven Shillings & two pence due by bill assigned him by his Father Majo<sup>r</sup> John Pincheon of Springfeild bearing date y<sup>e</sup> twenty fourth day of Octob<sup>r</sup> 1670 as

thereby may amply appeare in all respects reference thereto being had with due damages for non paiement & all other due damages according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 17<sup>th</sup> 1673. . . . The Jury . . . founde for the plaint. Eleven pounds seven Shillings & two pence in specie according to bill & costs of Court. The Defend<sup>t</sup> appealed from the judgm<sup>t</sup> of this Court to the next Court of Assistants, & the s<sup>d</sup> Ri: Collicot as principall in two & twenty pounds & Humphry Hodges & In<sup>o</sup> Williams as Sureties in Eleven pounds apeice acknowledged themselves respectively bound to . . . prosecute his Ap-peale . . .

[This case grew out of a journey to Springfield twenty-seven years before. Richard Collicott's side of the case is related in S. F. 1275.6, and again in his Reasons of Appeal (S. F. 1275.3):

To the Honored Court of Assistants Assembled Jn Boston Richard Collecots Resons of Appeale From the County Courtt Held Att Boston Jn October Last past Wherin John Pinchon Assigne To Majo<sup>r</sup> Pinchon Esq<sup>r</sup> Was Plaintiff<sup>e</sup>

Imp<sup>rs</sup>: The Appellant Desires to Informe this Hono<sup>rd</sup> Courtt and Jury of y<sup>e</sup> true state of y<sup>e</sup> Case That in y<sup>e</sup> yeare 1646 hauing Ocasion to Ride to Conecticott m<sup>r</sup> Atherton of Dorchester (After Majo<sup>r</sup> Gen<sup>ll</sup>) hauing A Daughter Liuing Att Sprinckfeild w<sup>th</sup> one m<sup>r</sup> Moxon who was then preacher there Desired the Appellant to Bring y<sup>e</sup> Majo<sup>rs</sup> Daughter With him, & y<sup>e</sup> Appellant hauing Dis-course With m<sup>r</sup> William Pinchon, he tendered to sell him A horse to Cary the young Woman Down to y<sup>e</sup> Bay, & Accordingly wee Agreed & when J Came to Dorchester hauing noe Ocasion fo<sup>r</sup> y<sup>t</sup> horse J sold the said Horse to Mathew Barnes then Miller of Brain[tr]e & he was to pay fo<sup>r</sup> y<sup>e</sup> sd Horse to m<sup>r</sup> [blotted] Daus of Boston according to my Agrement With m<sup>r</sup> Pinchon & J am Cleare in my Consiance y<sup>t</sup> Mathew Barnes Did make pay<sup>t</sup> fo<sup>r</sup> said Horse to sd Daus. Both Jn time & specie, Fo<sup>r</sup> these Resons Following:

1<sup>st</sup> He the said Barnes Was Looked vpon as A man of A good estate & a [torn] Looked vpon as A punctuall man in his payments.

2. J proue by two of his men y<sup>t</sup> wrought w<sup>th</sup> him About that time that he Called them to help Loade his Cartt w<sup>th</sup> A good quantity of wheat & other Corn & told them he was to Cary that Wheat to Boston to pay fo<sup>r</sup> y<sup>e</sup> horse then in y<sup>e</sup> Cart bought of y<sup>e</sup> Appell<sup>t</sup> w<sup>ch</sup> was y<sup>e</sup> horse in Controu<sup>rsy</sup> & to Deliu<sup>r</sup> y<sup>e</sup> said wheat to y<sup>e</sup> sd Daus of Boston vpon y<sup>e</sup> Appell<sup>ts</sup> Accont & this y<sup>e</sup> sd Barnes spoke voluntarily to those y<sup>t</sup> were no way Conserved in y<sup>e</sup> Case & Doubtless he both Brought it to Boston & deliuered it Accordingly, And Doubtless J had vnd<sup>er</sup> his hand fo<sup>r</sup> soe Doeing & had A Receibt fo<sup>r</sup> it but haue Lost all.

3dly. J was Att Sprinckfeild & Lodged at sd m<sup>r</sup> Pinchens house & Lodged there after y<sup>e</sup> payment was due & none Was Demanded of me & J spake with sd m<sup>r</sup> Pinchon when he was Jn Boston Bound fo<sup>r</sup> England & he neu<sup>r</sup> then Demanded any Sattisfaction from me & J Lived After in Boston: 16: or 17. yeares [&] in New England. 40. odd yeares & neu<sup>r</sup> out of y<sup>e</sup> County & Majo<sup>r</sup> pinchon hath ben here in Boston [ ] yeares & neu<sup>r</sup> Demanded any pay from me till the



yeare 1668. or 69 w<sup>ch</sup> was 23. yeares or more After J bought the horse, But had it ben Demanded when Mathew Barnes was Liuing who Liued in Boston Afte<sup>r</sup> J Came here to Liue & [then] Jn y<sup>e</sup> Bay & had an Estate in Boston, But y<sup>e</sup> said Pinchon neu<sup>r</sup> Demand the Debt of me till y<sup>e</sup> said Barnes Was gone out of y<sup>e</sup> Country & Dead & had it ben Demanded while y<sup>e</sup> sd Barnes was here if he had not paid it J Cold haue had my Remedy Against him, & As fo<sup>r</sup> y<sup>e</sup> Bill on [torn] J was Sued at y<sup>e</sup> County Court by m<sup>r</sup> Pinchon one w<sup>ch</sup> J was Cast J Desire y<sup>e</sup> Hono<sup>d</sup> Court & Jury to Consid<sup>er</sup> how it Can be Legall y<sup>t</sup> J Cold be Cast on this Acco<sup>nt</sup> fo<sup>r</sup> Majo<sup>r</sup> Pinchon Sued me first vpon his form<sup>r</sup> Bill & had An Execution Against me for it & this Bill J gaue Vpon Condition J did not proue payment by Such a time so y<sup>t</sup> y<sup>e</sup> first Execution stands still out Against mee, & now If J should be againe Cast by this Hono<sup>d</sup> Court m<sup>r</sup> Pinchon Wold haue two Execu- tions Against me for one & the same Debt. Which J hope the Hono<sup>d</sup> Court & Jury will seriously Consider Legallyty off:

4: I doe this Certify To y<sup>e</sup> Hono<sup>d</sup> Courtt that J neu<sup>r</sup> Receiued The Pay From Mathew Barnes for the Horse [torn] nor any other by me or my ord<sup>r</sup> but ordered it to bee paid to Cap<sup>t</sup> [torn] vpon Said Majo<sup>r</sup> Pynchons Acco<sup>nt</sup> and To this J Can Take my Oath. . . .

Richard Callecott

These Reasons were received Feb<sup>ry</sup>: 25<sup>th</sup> 1673

Per Js<sup>a</sup> Addington Cler

Collicott's agreement, dated Oct. 24, 1670, to pay the original judgment of 11*l* 7*s* 2*d* obtained by Pynchon at the Springfield court, follows (S. F. 1275.4):

Whereas Cap<sup>t</sup> Iohn Pynchon of Springfeild hath obtained a judgment ags<sup>t</sup> mee Richard Collicot; at the last County Court in Springfeild & taken out Execu- tion against mee to the Summe of eleven pounds seven Shillings two pence: Vpon his the sd. Pynchons forbearing the Serving the Execution: I doe hereby Engage & promise to pay the sd Summe of eleven pounds seven Shillings & two pence, by the last day of Aprill next, unless I shall make it appeare to the sd. Pynchons satisfaction that I have already paide the Summe which was due upon a bill to m<sup>r</sup> W<sup>m</sup> Pynchon of Springfeild Dated in Iuly. 1646 which is the ground of the Judgment afores<sup>d</sup> Jn case of not clearing the payment of the bill afores<sup>d</sup> J doe by these pu<sup>s</sup>ents binde mee my heires Executo<sup>rs</sup> & Administrato<sup>rs</sup> firmly to pay the aforementioned Summe of eleven pounds seven Shillings two pence in good Merchantable & well conditioned wheat at the price of four Shillings per bushell or else in mony to bee dlr<sup>d</sup> & paide at Cap<sup>t</sup> Davis his house in Boston by the last day of Aprill next which wilbee Ann<sup>o</sup> 1671. to m<sup>r</sup> John Pynchon or his Assignes. Jn Witness whereof J have hereunto set my hand this 24<sup>th</sup> day of Octob<sup>r</sup> An<sup>o</sup> Dom. 1670. the words (or else in mony) was interlined before Sub- scribing.

Richard Collecott

Witness. W<sup>m</sup> Davis

Benj<sup>a</sup> Davis.

Owned in Court by m<sup>r</sup> Richard Collicot 29. 8. 73 Attests Js<sup>a</sup> Addington Cler

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

Endorsed. Springfeild. Aprill. 21<sup>th</sup> 1671.

M<sup>r</sup> Rich: Colicott. S<sup>r</sup> I desire yo<sup>w</sup> to pay to my Sonn Iohn the mony due to mee from yo<sup>r</sup> selfe being. 11<sup>li</sup> 7<sup>s</sup> 2<sup>d</sup> in wheat at. 4<sup>s</sup> per bush. which you [*torn*] Engaged to pay to my Assigne in Boston. by the last day of th[is] present Aprill: Now I doe hereby Assigne my sonn Joh[n] Plynchon the bearer hereof to receiv[e] it of you: J pray faile not [to] pay it to him at time. & hee will dlr yo<sup>w</sup> up yo<sup>r</sup> bill. J subscribe.

Yo<sup>r</sup> lo: Freind

John Pynchon

Witness to this Assignement.

Elizue Holyoke

Joseph Whiting

This Assignement was acknowledged by Majo<sup>r</sup> John Pinchon to bee his act this 22<sup>th</sup> Sep<sup>er</sup> 73. before mee

Simon Bradstreet Assist

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

Collicott's appeal was allowed, but the jury of the higher court confirmed the former judgment and imposed costs on Collicott. Records of Court of Assistants, i. 8.]

#### CLARKE ags<sup>t</sup> HARRIS

Thomas Clarke Esq<sup>r</sup> plaint. ags<sup>t</sup> John Harris of Charlestown Defend<sup>t</sup> in an accion of debt of twelue pounds due by bill & due damages according to Attachm<sup>t</sup> Dat. August 30. 1673. . . . The Jury . . . founde for the plaint. twelve pounds in mony according to bill & costs of Court being twenty six shillings two pence

Execucion issued Nov<sup>r</sup> 12, 1673. [167]

#### THAYRE ags<sup>t</sup> ROSE

Richard Thayre plaint. ags<sup>t</sup> Roger Rose Defend<sup>t</sup> in an accion of the case for not performing his Engagement or Covenant about the building a vessell at Brantery which will appeare by Evidence, which proved about two hundred & odde pounds to the damage of the plaint. & all other due damages according to Attachm<sup>t</sup> Dat Octob<sup>r</sup> 10<sup>th</sup> 1673. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court. The plaint. appealed from the judgment of this Court to the next Court of Assistants & the s<sup>d</sup> Richard Thayre as principall in five pounds & Nathan<sup>li</sup> Thayre & In<sup>o</sup> Williams as Sureties in fifty Shillings apeice acknowledged themselves respectiuey bound to . . . prosecute his appeale. . . .

[Thayer's Reasons of Appeal (S. F. 1342.2) explain this case. Rose's "Answer to the Pretended Reasons" (S. F. 1342.3) incidentally reveals

the existence of a "pleasure boate" in 1672. The records include a copy of the writ of attachment, and a deposition of "Edmund Quinsey aged about 43 Yeares" on 29 October 1673.

Richard Thayre Resons of Appeale From the County Courtt Held Att Boston October the 28<sup>th</sup> 1673 Against Roger Rose Defend<sup>t</sup>: To the Hono<sup>d</sup> Courtt of Assistants:

Jmp<sup>rs</sup>: Whereas y<sup>r</sup> Appellantt Did Att the County Courtt Sue the Defend<sup>t</sup> For Nott p<sup>r</sup>forming his Couenantt and Agreementt Made And Agreed vpon Aboutt the Building A vessell Att Braintre which the Appell<sup>t</sup> hath sufficiently made Appeare by severall Evidences For First the Appellant hath Proued A Couenant made w<sup>th</sup> y<sup>e</sup> Appellant and others About the building A Ketch Att Braintre And mony paid by the Def<sup>t</sup> As Owne<sup>r</sup> of sd vessell To the Workemen for there Worke, and Also that the Defend<sup>t</sup> sett them A Worke As by the Testimonies of John Downing n<sup>o</sup> 1. Appeareth And that he Also paid the Workemen For the Worke Done in part vpon the vessell:

2<sup>dly</sup> The Appellantt proues that the Defend<sup>t</sup> himselfe Owned that he had A vessell Abuilding Att Braintre As by the Testimony of William Pen And Edward Linfford And Left Quinsey and Vining And Holebrooke Whoe Doe All Testify that he Did Owne he had A vessell A building Att Braintre, And that the Appellantt had A Partt With him, And the Defend<sup>t</sup> paid and Disbursed Mony vpo her. Till he thoughtt he had Ketched the plantiff<sup>e</sup> Sufficiently into A snare y<sup>t</sup> he Could not Well gitt outt, And that he thought he Should Come by Damage by his neglect Jn not supplying them With what he had Jngaged According to Contractt And soe Left the Appellant Jn the Lurch, he hauing an Estate and being att Braintre and being out of purse both fo<sup>r</sup> y<sup>e</sup> Defend<sup>ts</sup> partt and his owne Aboue 200<sup>l</sup> besides the Damage Done to his Estate being Forsed to sell some of his Land to pay the Defend<sup>ts</sup> Debts

3<sup>dly</sup> The Appellantt Hath proued that the Contract betwene them and the Carpenters Was by him the Defendantt Ordered to bee made and the Directions by him giuen to y<sup>e</sup> scriuene<sup>r</sup> and he ordered himselfe to be owne<sup>r</sup> w<sup>th</sup> y<sup>e</sup> Appellant And the mony Paid by y<sup>e</sup> Defend<sup>t</sup> to the Scriuene<sup>r</sup> for making y<sup>e</sup> Couenantt Which Js sufficiently proued by the Scriuene<sup>rs</sup> Oath & others. & the Couenant Jtt selfe sheweth it & his seale Affixed therevnto, but the Neglect of signing of it in Time he Refused to signe, and soe Left yo<sup>r</sup> poo<sup>r</sup> Appellant in the Lurch, and forses him to Cary own the Designe himselfe: There is Also the protest of y<sup>e</sup> Carpenters. Against the Defend<sup>t</sup> as owne<sup>r</sup> of y<sup>e</sup> vessell and the Carpenters All along Doe Call him Owne<sup>r</sup> of y<sup>e</sup> one halfe of said vessell & knew no othe<sup>r</sup> as there protest Manifesteth. And Also y<sup>e</sup> Judg<sup>t</sup> of y<sup>e</sup> Commission<sup>rs</sup> Court when he sued y<sup>e</sup> Carpenters for mony he paid them they Justly Cast him finding him An owne<sup>r</sup> & what they Recd it was as he was Owne<sup>r</sup> of said vessell, Which J hope this Hono<sup>d</sup> Court & Jury will See: And Consid<sup>r</sup> of.

4: The Damage the Appellant Sustained By the Defend<sup>t</sup> the plantiff<sup>e</sup> hath proued sufficiently to be Aboue 238<sup>l</sup> for first there is: 40<sup>l</sup> Jn Timber sold y<sup>e</sup> Carpint<sup>rs</sup>, & 2<sup>d</sup> 41<sup>l</sup> paid the Carpenters for there Worke 3<sup>dly</sup> there is Iron Worke & Rigin &<sup>ct</sup>. pd m<sup>r</sup> Kemball & others as by y<sup>e</sup> Award 44<sup>l</sup> 10: 10: besides my own partt: 4. There is 76<sup>l</sup> 11<sup>s</sup> pd m<sup>r</sup> Parsons by Execution, and besides y<sup>e</sup> Charges hath cost 36<sup>l</sup> 11<sup>s</sup> 3<sup>d</sup> by y<sup>e</sup> Carpenters all through the Deceitfullness of y<sup>e</sup> Defend<sup>t</sup>



in his Actions Besides. other Disbursements, and Cannot Dispose of y<sup>e</sup> Ketch because of y<sup>e</sup> Def<sup>t</sup> Soe that Jn all the Appellant Js Damnified Aboue 238 which is Sufficienttly proued Which The Appellant hopes Will be Considered by this Hono<sup>d</sup> Courtt and Jury That soe he may haue some Releife. Weying the Euidences J hope that J haue sufficiently proued first The Defend<sup>t</sup> to be an Owne<sup>r</sup> And that he ordered the Caryng Along of the Affaires of y<sup>e</sup> said vessell, & hath Done the Appell<sup>t</sup>, his Neighbo<sup>r</sup> a great deale of wrong Contrary to y<sup>e</sup> Law of God and man; And Also The Appell<sup>t</sup> hath proued y<sup>t</sup> the Defend<sup>t</sup> by his meanes hath Wronged y<sup>e</sup> plantif<sup>e</sup>, & Damnified him in his Estate Aboue 238<sup>l</sup> Which yo<sup>r</sup> poo<sup>r</sup> Appellant shall Leaue to y<sup>e</sup> Hono<sup>d</sup> Court And Gentle men of y<sup>e</sup> Jury to Consid<sup>r</sup> hoping they will see Just Cause to Releue him therein.

Richard Thayer

These Reasons were received Feb<sup>ry</sup> 26<sup>th</sup> 1673

Per Js<sup>a</sup> Addington Cler

Roger Rose his Answer to the p<sup>r</sup>tended Reasons of Appeale Jn the Case depending between him and Richard Thaire Appellant

Jmp<sup>rs</sup> Jn answer to his first Reason —,

It is not denied but that there was a treaty w<sup>th</sup> y<sup>e</sup> Appealant<sup>t</sup> about the Building of a vessell at Braintry & writings might bee drawne in order thereunto: but when y<sup>e</sup> Defend<sup>t</sup> had perused sd writings & better considered therevpon, hee refused to signe & seale them For the defend<sup>t</sup> was informed by the Appealant, That m<sup>r</sup> Simon Linds would carry on a part of sd vessell; w<sup>ch</sup>, when the defend<sup>t</sup> spoke w<sup>th</sup> him about hee wholly refused to doe: & did asmuch discourage y<sup>e</sup> defend<sup>t</sup> And whereas y<sup>e</sup> Appeal<sup>t</sup> saith that hee had sufficiently proved the Couenant w<sup>th</sup> the defend<sup>t</sup> The defend<sup>t</sup> Conceiues y<sup>t</sup> if hee had soe done hee had not needed to haue appealed to this Court as nowe hee doth And it is a knowne principall in Lawe That noe man can bee cast vpon a treaty of a Couenant: For a Couenant vntill it bee vnder hand & seale Signifies nothing And as for w<sup>t</sup> the defend<sup>t</sup> did Disburse or lend vnto the Appeal<sup>tt</sup> Jt was for or vpon building of an open vessell to carry wood & not vpon a Deckt vessell or Katch w<sup>ch</sup> the sd Appeal<sup>t</sup> was pleased to build for a pleasure-Boate for himselfe.

2ly Jt's possible the Defend<sup>t</sup> might say y<sup>t</sup> hee had a vessell in building at Brantry: But hee neuer Intended any other then an open Boate as aforesd to Supply his owne occasions, which hee neuer sawe or heard was yet built: And the defend<sup>t</sup> is not yet vnwilling to beare a part of such a vessell when shee is built, provided it may bee on termes as shee may be worth in reason.

3ly Whereas the Appealant is pleased to insist much vpon the Couenant vpon w<sup>ch</sup> hee builds soe much nowe, Hee hath not proved y<sup>t</sup> the defend<sup>t</sup> Either Signed or Sealed any Couenant And whereas hee hints the Scriven<sup>rs</sup> oath: For Answer. Jt is fit the Scriveno<sup>r</sup> should bee paid though y<sup>e</sup> parties agreed not And the affixing of wax to a paper, The defend<sup>t</sup> conceiues doth not oblige any further then witnesses prove that they sawe the persons signing and Sealing affix the same w<sup>ch</sup> Neither the Scriven<sup>r</sup> or any person else did or can testify in this case.

4ly Whereas the Appealant pleads & pretends prooffe of great damage by the defend<sup>t</sup>s not performing a Blanck or Supposed Coven<sup>t</sup> to the value of 238<sup>l</sup> Though the Appealant hath sould all all The defend<sup>t</sup> hath had noe part first or last in principall or produce of sd vessell Either before or since shee was built And the plancke timber Ironworke &<sup>c</sup> hath all been in the Appealants hands w<sup>ch</sup> hee hath



disposed of at his owne pleasure w<sup>th</sup>out the Councell or Advice of the Defend<sup>t</sup> or any Account giuen him of his proceedings from first to last Neither could the Appealant bee damnified to any such value as hee pretends: The defend<sup>t</sup> declaring his disowning his proceeding in partnership before the Appealant had disburst anything considerable vpon building sd vessell.

5ly As to the Katch which the Appealant p<sup>r</sup>tends the defend<sup>t</sup> had an Interest in: It will bee easily proved if the Appealant deny it That hee Sould one halfe of her to Willm Parsons of Boston and reced satisfacion for it (as the hon<sup>d</sup> Gou<sup>r</sup>no<sup>r</sup> & others who were Arbitrato<sup>rs</sup> between them can testify) And the Appealant likewise denied at the same time & before sd Arbitrato<sup>rs</sup> that the defend<sup>t</sup> had neyther part or interest in the sd vessell: Soe that (if it could bee proved as it neuer yet was) The defend<sup>t</sup> could haue noe part in the vessell pretended to bee built by his order. There being noe vessell yet built according to the first Intentions or Dimensions.

Soe hoping and not Doubting but that this hon<sup>rd</sup> Court & Jury will see and Consider the Righteousnes & equity of the Case leave it their wise Determination thereof And shall Remaine

Yo<sup>r</sup> humble Serv<sup>tt</sup>

Roger Rose

Boston 3<sup>d</sup> Feb: 74

The appeal was allowed to the Court of Assistants, where the jury "found for the Deffendant Costs of Court," 34s. Records of Court of Assistants, i. 5.]

#### PARKER ags<sup>t</sup> PEARSE

Noah Parker plaint. ags<sup>t</sup> Sammuell Pearse Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Septembr 16<sup>th</sup> 1673. The pl<sup>t</sup> withdrew his accion & the Court granted the Defend<sup>t</sup> Fourteen Shillings two pence costs Execucion issued 11 9<sup>br</sup> 1673

#### OXENBRIDGE &<sup>a</sup> ags<sup>t</sup> HAYDEN

John Oxenbridge James Allen & Anthony Stoddard Exec<sup>rs</sup> to the Last will & Testam<sup>t</sup> of Richard Bellingham Esquire deceased plaint<sup>s</sup> against Ebenezer Hayden Defend<sup>t</sup> in an accion of debt for five yeeres rent due for a Shop hee held of the s<sup>d</sup> Bellingham with all other due damages according to Attachm<sup>t</sup> Dat. Iuly 25<sup>th</sup> 1673. . . the Iury . . . founde for the Defend<sup>t</sup> costs of Court.

#### PHILLIPS ags<sup>t</sup> HAWTHORN

Zachariah Phillips plaint. ags<sup>t</sup> John Hawthorn Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat 24 7<sup>mo</sup> 1673. The plaint. upon non appearance was non Suited.

YEALE ags<sup>t</sup> SHOARE

Timothy Yeales plaint. ags<sup>t</sup> Ionathan Shoare Defend<sup>t</sup> in an accion of debt upon the forfeiture of a bill of ten pounds for non payment of a debt of five pounds in mony as appeares by the s<sup>d</sup> bill & due damages according to Attachm<sup>t</sup> dat. Octobr<sup>r</sup> 22<sup>th</sup> 1673 . . . the Iury . . . founde for the plaint. five pounds in mony & costs of Court. the Defend<sup>t</sup> appealed from the judgment of this Court to the next Court of Assistants. [168] And the s<sup>d</sup> Ionathan Shoare as principall in ten pounds & Sampson Shoare sen<sup>r</sup> & Iohn Hawthorn as Sureties in five pounds apeice acknowledged themselves respectively bound to . . . prosecute his appeale . . .

[S. F. 1278

Jonathan Shoare his resons of Apeale from the County Court in boston, the last october, vnto the Court of Assistance next, in the cause between himselfe and Timothy Yeale, are as followeth—

1: The bill of five pounds that the said Timothy sued for is made upon noe Consideration, and soe not sueable in the comon law, according as Information is giuen by the law or custom of the practis in England, and Indeed it is true, for Ther was noe consideration that the said bill was made upon which is the second reson: namlye: if it was not made in consideration as in the second reson—

2: That this said bill was obtained in a clandestin waye by flatterye &c: for the said Timothy hath a Couenant of the said Shoar for forty od pounds, to doe a parcell of work, in finishing of the frame of a house, now the said Shoare did euer vnderstand that this bill notwithstanding soe obtained as abouesaid; was a part of this Couenant of forty od pounds about the said frame, but in the aforesaid County Court in boston in open Court, when it was said by the defendant Shoare; then: that this bill was part of the forty od pounds in the aforesaid Couenant, the said Timothy denied, that this bill was noe part of the said forty od pounds, now the said Shoare had noe other dealings with the said Timothy and denying this to be any part, of the aforesaid Couenant, nor can the said Timothy say for any other cause or consideration that this said bill is forr and that the said Shoare is condemnable by the Common law for the whole Couenant, notwithstanding; soe that the said Timothy obtaineing this bill (for the end aforesaid as the said Shoare at first thought, and the said Timothy denying of it, the said Shoare is therby deceiued of his equall & Just right, and the said Timothy hath tow obligations for one thing which the said Shoare humbly relyeth vpon this Honored Court for there serious consideration off: this 24 of February 1673:

Jonathan Shore

These Reasons were received February 26<sup>th</sup> 1673

Per Js<sup>a</sup> Addington Cler

When the action of the appeal was called at the Court of Assistants, both parties appearing “and owning that they were agreed,” the case was dismissed. Records of Court of Assistants, i. 9.]

HUDSON ags<sup>t</sup> ATHERTON

Cap<sup>t</sup> William Hudson plaint. ags<sup>t</sup> the goods or Estate which formerly belonged to Major gen<sup>l</sup> Humphry Atherton deceased now in the hands of the adm<sup>rs</sup> to the s<sup>d</sup> goods or Estate Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat Iuly 23<sup>th</sup> 1673 by continuance from the Last County Court. The plaint. upon non appearance was Non suited.

HUDSON ags<sup>t</sup> DAVENPORT

Cap<sup>t</sup> William Hudson plaint. ags<sup>t</sup> the goods debts or Estate which formerly belonged to Cap<sup>t</sup> Richard Davenport deceased now in the hands of the adm<sup>rs</sup> to the s<sup>d</sup> Estate Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. May 28<sup>th</sup> 1673 by continuance from the Last County Court. The plaint. upon non appearance was non Suited.

RICHARDS Fin<sup>d</sup> 13<sup>s</sup> 4<sup>d</sup>

William Richards of Weymouth not appearing to Serve on the Grand jury according to Summons was fined thirteen Shillings & four pence in mony to the County.

BENSON Fin<sup>d</sup> 5<sup>s</sup>

Iohn Benson of Hull not appearing to Serve on the Jury of tryalls according to Summons was Fin<sup>d</sup> ten Shillings in mony to the County. hee afterwards appearing & making his plea the Court remitt<sup>d</sup> five Shillings of his Fine.

HARDING Fin<sup>d</sup> 10<sup>s</sup> & remitted

Iohn Harding of Meadfeilde not appearing to Serve as aboue was Fined ten Shillings in mony to the County. vpon his petition the Court remitted his Fine.

DYVEN to CLARKE Esq<sup>r</sup>

John Dyven of Hammersmith neere Lynn personally appeared in Court & acknowledged a judgm<sup>t</sup> ags<sup>t</sup> himselfe & Estate to Major Thomas Clarke Esq<sup>r</sup> for Fifteen pounds twelve Shillings in mony. as Attests Isaac Addington Cler.

Execution issued Feb<sup>r</sup> 13<sup>o</sup> 1678

## KENT to WENSLEY

William Kent personally appeared in Court & acknowledged a judgment against himselfe & Estate to Iohn Winsley Merchant for Sixteen pounds Eleven Shillings & sixpence according to bill in mony. as Attests Isaac Addington Cler.

## TAYLOR to KENT

Caleb Taylor personally appeared in Court & acknowledged a judgment against himselfe & Estate for Sixteen pounds eleven Shillings & six pence in mony [169] unto William Kent as Attests Isaac Addington Cler.

Execucion issued 8<sup>br</sup> 31 1673

## NORMAN to WOODMANSEY

Thomas Norman personally appeared in Court & acknowledged a Judgment against himselfe & Estate unto Iohn Woodmansey for ten pounds according to an Award of Arbitracior. as Attests Isaac Addington Cler.

Execucion issued X<sup>br</sup> 8 1673

## TURNOR to SHAW

Increase Turnor personally appeared in Court & acknowledged a judgment against himselfe & Estate unto Ioseph Shaw for thirty pounds in mony. as Attests Isaac Addington Cler.

BOWLES discharg<sup>d</sup> from treyning

Iohn Bowles sen<sup>r</sup> of Roxberry upon his petition to this Court was discharged from Ordinary Treynings.

## Grand jury discharged

The Grand jury brought in theire bill of presentments Octob<sup>r</sup> 29<sup>th</sup> 1673 & were discharged.

## PENNIMAN purged by Oath

Iames Penniman being accused & bound over to this Court to Answer for his selling strong Liquo<sup>rs</sup> to an Indian named Thomas Boson; purged himselfe by his Oath according to Law.



TOLMAN Fin<sup>d</sup> 2<sup>s</sup> 6<sup>d</sup>

Thomas Tolman one of the Iury of tryalls not attending the Service of the Court when called for was Fin<sup>d</sup> twenty Shillings in mony to the County, afterwards appearing & making his excuse The Court remitted his fine to two Shillings & six pence

GILFORD present<sup>d</sup>

Paul Gilford being presented by the Grand jury for bruitish & uncivill carriages & noe Evidence appearing against him was discharged.

THAXTER &<sup>a</sup> Fin<sup>d</sup> & remitted

Ensigne Iohn Thaxter Thomas Sayer Dan<sup>ll</sup> Howard & Ieremiah Beales Iun<sup>r</sup> all of Hingham being legally Summoned to give in Evidence to a presentm<sup>t</sup> against Paul Gilford & not appearing upon due calling were fined ten Shillings apeice in mony to the County. afterward appearing & making their excuse The Court remitted their Fines.

BELCHER bound over to y<sup>e</sup> next County Court

Iohn Belcher of Brantery being bound to the good behavio<sup>r</sup> by the last County Court untill this Court & then appearing & desiring proclamacion to bee made for his discharge; It was Objected hee had broken his bond vpon which the Court Ordered him to give bond to appeare at the next County Court to Answer it & Ordered a Summons to bee issued out for Christopher Webb & In<sup>o</sup> Hayden then to appeare to give in Evidence against him accordingly the s<sup>d</sup> In<sup>o</sup> Belcher as principall in ten pounds & Gregory Belcher & Ioseph Belcher as Sureties in 5<sup>li</sup> apeice acknowledged themselves respectiuey bound to the Treasuro<sup>r</sup> of y<sup>e</sup> County of Suffolke on condicion that s<sup>d</sup> In<sup>o</sup> Belcher should then appeare & abide the Ord<sup>r</sup> of y<sup>e</sup> Court. [ 170 ]

## HEARSY Sworn a Freeman

William Hearsy of Hingham tooke the Oath of Freedom of this Colony.

LINCOLN Fin<sup>d</sup> 6<sup>s</sup>

Sammuell Lincoln of Hingham being presented by the Grand jury for receiving goods that were stoln from him contrary unto

Law, of which hee was convict by his own confession in Court: The Court Sentenc<sup>d</sup> him to pay six Shillings in mony as a fine to the County & Fees of Court with charge of prosecution standing committed untill the Sentence been performed.

IN<sup>o</sup> COOKE Fin<sup>d</sup> 4<sup>li</sup> ½ rebated

In<sup>o</sup> Cooke of Mendon bound over to this Court to answer for his assailing & wounding Sammuell Holbrooke upon the highway of which hee was convict in Court. The Court Sentenc<sup>d</sup> him to bee whipt with fifeteen Stripes or to pay four pounds in mony as a fine to the County w<sup>th</sup> charge of prosecution & Fees of Court standing committed untill the Sentence bee performed. Vpon the petition of his Father Walter Cooke The Court remitted halfe the fine imposed on his Son Iohn.

COOKE Fin<sup>d</sup> 4<sup>li</sup> ½ rebated

Sammuell Cooke bound over & convict as aboue: The Court Sentenced him to bee whip't with fifeteen Stripes or to pay four pounds in mony as a fine to the County w<sup>th</sup> charge of prosecution & fees of Court standing committed untill the Sentence bee performed Vpon the petition of his Father Walter Cooke The Court remitted halfe the Fine imposed on his Son Sammuell.

WAMPUS admonisht

Anne Wampus bound over to this Court to Answer for abusing & strikeing of her husband The Court vpon giving of her an admonition Ordered her to pay Fees of Court & soe discharged her.

DUDLY Find 10<sup>s</sup>

Francis Dudley bound over to this Court to Answer for his Fighting & quarrelling with Ioseph Knight of which hee was convict in Court The Court Sentenced him to pay ten Shillings in mony as a fine to the County & Fees of Court standing committed untill the Sentence bee performed.

KNIGHT Fin<sup>d</sup> 10<sup>s</sup>

Ioseph Knight bound over to this Court to Answer for his fighting & quarrelling with Francis Dudley of w<sup>ch</sup> hee was convict in Court

The Court Sentenc<sup>d</sup> him to pay ten Shillings in mony as a fine to the County & Fees of Court standing committed untill the Sentence bee performed. Ioseph Knight Appealed from the Sentence of this Court to the next Court of Assistants & gave bond to prosecute his Appeale to Effect.

GRAVES Fin<sup>d</sup> 10<sup>s</sup>

Benjamin Graves bound over to this Court to Answer for his fighting & quarrelling with Ioseph Knight of which hee was convict in Court. The Court Sentenc<sup>d</sup> [ 171 ] him to pay ten Shillings in mony as a fine to the County & Fees of Court standing committed untill the Sentence bee perform<sup>d</sup>

READ Sworn a Freeman

Sammuell Read of Mendum tooke the Oath of Freedom of this Iurisdiction.

SARAH SCOT

Vpon due proclamacion made Sarah Scot was discharged from her bonds of good behavio<sup>r</sup>

JAMES HARRIS

Vpon Like proclamacion made, Iames Harris was discharged from his bonds of good behavio<sup>r</sup>

ELIZ<sup>a</sup> SALTER

Vpon Like proclamacion made Elizabeth the wife of Iabesh Salter was discharged from her bonds of good behavio<sup>r</sup>

MEHETABLE SALTER & MARY WHEELER

Vpon Like proclamacion made Mehetable Salter & Mary Wheeler were discharged from theire bonds of good behavio<sup>r</sup>

IOYES presentm<sup>t</sup> Owned

Thomas Ioy being presented for digging through the highway which Lieth against the s<sup>d</sup> Ioyes dwelling house in Boston, whereby its made dangerous for man & beast The Court Orders that the s<sup>d</sup> Ioy doe well & suffitiently repaire the s<sup>d</sup> way to the approbacion of

Majo<sup>r</sup> Thomas Clarke Esq<sup>r</sup> Cap<sup>t</sup> Thomas Lake & m<sup>r</sup> Jn<sup>o</sup> Richards within fourteen dayes next following upon penalty of twenty pounds to bee forfeited to the Treasuro<sup>r</sup> of this County & to pay Fees of Court.

Milton presentm<sup>t</sup>

The Town of Milton being presented for neglecting their duty in making a sufficient highway coming down the hill neere the Indian gate; as also for neglecting to mend the way through Robert Vosses Farme: The Court Orders that the Town of Milton repaire both the s<sup>d</sup> highwaies w<sup>th</sup>in Fourteen dayes next following upon the penalty of five pounds to bee forfeited by the s<sup>d</sup> Town to the Treasuro<sup>r</sup> of this County & to pay Fees of Court.

HENCHERS discharge

Vpon due proclamacion made Daniell Hencher was discharged of his bonds of good behavio<sup>r</sup>

SILVESTERS discharge

Richard Silvester was also on due proclamacion discharg<sup>d</sup> from his bonds of good behavio<sup>r</sup>

SILVEST<sup>r</sup> Sent<sup>a</sup>

Dinah Silvester bound over to this Court to Answer for her committing of Fornicacion & having a bastard Childe not being in a marriage state; which Shee Owned in Court, charging Ionathan Badcock to bee the Father thereof & s<sup>d</sup> hee had fellowship with her but once & that it was in Octob<sup>r</sup> 1672. The Court Sentenced her to bee whip<sup>t</sup> severely with twenty Stripes immediately after the next Lecture in Boston, & then to bee sent home to Milton & there to bee severely whip<sup>t</sup> with twenty Stripes by the Constable of the Town or some other person whome hee may procure in presence of [ 172 ] the Select men or some of them, to bee done within one month after her first whipping & to pay Fees of Court standing committed untill the Sentence bee performed.

LORIN Fin<sup>d</sup> 40<sup>s</sup>

Iohn Lorin bound over to this Court to Answer for his misdemeanor in riding upon his Cart & driving his Cart upon or against



the wife of Iohn Iones of Charlestown, whereby She received hurt of which hee was convict in Court. The Court Sentenc<sup>d</sup> the s<sup>d</sup> Lorin to pay Forty Shillings in mony as a fine to the County & Fees of Court & Leauē the party wronged to her due course in Law; as also the Select men of Boston to prosecute him for breach of Town Ord<sup>r</sup>

#### DARE Fin<sup>d</sup> 3<sup>li</sup>

William Dare bound over to this Court to Answer for his wounding of Edward Gregory in the Shoulder by discharging a fowling peece Loaden with small Shot against him which hee Owned in Court; but it appearing to bee but accidentall & the person wounded being since recovered: The Court Sentenc<sup>d</sup> the s<sup>d</sup> Dare to pay three pounds in mony as a Fine to the County & Fees of Court standing committed untill the Sentence bee performed; Leaving the party wronged to his due course in Law against him

#### DAVIS whip<sup>t</sup>

Stephen Davis bound over to this Court to Answer for his committing Fornicacion with Sarah Francis; which hee Owned in Court: The Court Sentenc<sup>d</sup> him to bee whip<sup>t</sup> with twenty Stripes & to pay Fees of Court standing committ<sup>d</sup> untill the Sentence bee performed.

#### THO: WILLIAMS Fin<sup>d</sup> 10<sup>s</sup>

Thomas Williams bound over to this Court to Answer for his giveing mony to Iohn Billington in Order to the rescuing of Mary Forrest out of the Prison in Boston which hee Owned in Court: The Court Sentenc<sup>d</sup> him to pay ten Shillings in mony as a Fine to the County and Fees of Court Standing committ<sup>d</sup> untill the Sentence bee performed.

#### BILLINGTON Fin<sup>d</sup> 10<sup>s</sup>

Iohn Billington bound over to this Court to Answer for his attempting & Endeavouring the Escape of Mary Forrest a prison<sup>r</sup> out of the prison in Boston; which hee confessed in Court: The Court Sentenc<sup>d</sup> the s<sup>d</sup> Billington to pay ten Shillings in mony as a Fine to the County & Fees of Court standing committed untill the Sentence bee perform<sup>d</sup>

ROBINSONS Guard<sup>a</sup>

Mary Robinson appeared in Court Nov<sup>r</sup> 3, 1673 & made choise of m<sup>r</sup> Ioseph Rock to bee her guardian which hee accepted & the Court allowed of.

POLLEE Sent<sup>a</sup>

Ioseph Pollee convict in Court of stealing severall parcells of Linnen from m<sup>r</sup> Iohn Saffin m<sup>r</sup> Tho Kellond, Mary Hawkins & Ruth Marshall: The Court Senten<sup>ed</sup> him to bee [ 173 ] severely whip't with twenty Stripes & to pay unto m<sup>r</sup> Iohn Saffin Eighteen pounds three Shillings & four pence to m<sup>r</sup> Tho: Kellond ten pounds & four Shillings, to Mary Hawkins & Ruth Marshall four pounds being that threefold restitution that the Law requires, the s<sup>d</sup> Saffin Kellond Hawkins and Marshall to pay charges of prosecution & Fees of Court and prizon, hee s<sup>d</sup> Pollee standing committed untill the Sentence bee performed.

HOPPINS Sent<sup>a</sup>

Stephen Hoppin convict in Court of stealing several parcells of Linnen from m<sup>r</sup> Iohn Saffine m<sup>r</sup> Thomas Kellond, Mary Hawkins & Ruth Marshall The Court Sentenc<sup>d</sup> him to bee severely whip't with twenty Stripes & to pay unto m<sup>r</sup> John Saffin Eighteen pounds three Shillings & four pence to m<sup>r</sup> Tho: Kellond ten pounds four Shillings to Mary Hawkins & Ruth Marshall four pounds; being that threefold restitution that the Law requires, the s<sup>d</sup> Saffin Kellond Hawkins & Marshall to pay charges of prosecution Fees of Court & prizon, he s<sup>d</sup> Hoppin standing committed untill the Sentence bee performed.

GRININGS Sent<sup>a</sup>

Anthony Grining convict in Court of stealing severall parcells of Linnen from m<sup>r</sup> Iohn Saffine m<sup>r</sup> Thomas Kellond Mary Hawkins & Ruth Marshall: The Court Sentenc<sup>d</sup> him to bee severely whip't with twenty Stripes & to pay unto m<sup>r</sup> John Saffin Eighteen pounds three Shillings & four pence to m<sup>r</sup> Tho: Kellond ten pounds four Shillings, to Mary Hawkins & Ruth Marshall four pounds; being that threefold restitution that the Law requires, the s<sup>d</sup> Saffin Kellond Hawkins & Marshall to pay charges of prosecution Fees of Court & prizon, hee s<sup>d</sup> Grining standing committed untill the Sentence bee performed.

## HANNAH HOPPIN whip't

Hannah Hoppin convict in Court by her own confession of receiving severall of the stoln goods aboues<sup>d</sup> of her Son & others, which were founde in her custody & Shee flying upon it: The Court Sentenc<sup>d</sup> her to bee severely whip't w<sup>th</sup> Fifteen Stripes & to pay charge of prosecution & Fees of Court & prizon Standing committed untill the Sentence bee performed.

HENCHER Fin<sup>d</sup> 10<sup>s</sup>

Daniell Hencher of Milton presented for Swearing hee Owned the presentment in Court: The Court Sentenc<sup>d</sup> him to pay ten Shillings in mony as a Fine to the County with charge of prosecution & Fees of Court standing committed untill the Sentence bee performed.

DUEY's Sent<sup>a</sup>

William Duey a portugeez convict by his own confession in Court of stealing severall wearing apparrell from m<sup>r</sup> Iohn Sharpe, as also from Jacob Milborn [ 174 ] for whome s<sup>d</sup> Sharpe is Attourney) valued at three pounds & from Augustin Williams five pounds Sixteen Shillings The Court Sentenc<sup>d</sup> the s<sup>d</sup> Duey to bee whip't with twenty Stripes & to return to m<sup>r</sup> John Sharpe his goods againe & to pay him s<sup>d</sup> Sharpe six pounds: & to return unto Augustin Williams his mony againe & what goods hee hath bought with any part thereof & to pay him the s<sup>d</sup> Williams or his Attourney the Summe of twelve pounds twelve Shillings, being that threefold restitution that the Law requires; s<sup>d</sup> Duey to bee Sold for the Satisfaction of the same & the mony to bee devided between the parties according to proportion they paying charges of prosecucion & Fees of Court, hee standing committed untill the Sentence bee performed

DAVIS Fin<sup>d</sup> 40<sup>s</sup>

Sammuell Davis bound over to this Court to Answer for his Selling strong beere to the Indians in the Common on the 9<sup>th</sup> of Iune Last, which hee Owned in Court: The Court Sentenc<sup>d</sup> him to pay Forty Shillings in mony as a fine to the County & Fees of Court, standing committed untill the Sentence bee performed.

SHOARE Fin<sup>d</sup> 20<sup>s</sup> & 15<sup>s</sup> thereof remitted

Jonathan Shoare bound over to this Court to Answer for his selling or delivering strong beere to an Indian in the Common on the 9<sup>th</sup> of Iune Last: denied that hee either Sold or delivered any strong beere to an Indian: but Owned that hee sold strong beere in the Common on the s<sup>d</sup> day: The Court Sentenced him to pay twenty Shillings in mony as a Fine to the County & Fees of Court standing committed untill the Sentence bee perform<sup>d</sup> vpon his humble petition The Court remitted Fifteen Shillings of the s<sup>d</sup> Fine.

GROSS Fined 20<sup>s</sup>

Ellinor Gross bound over to this Court to Answer for her receiving of stoln goods which were found in her custody Owned in Court that those things were founde with her & Shee bought them of Benjamin Gold; which things were vallued at twenty Shillings & delivered to Good wife Gold from whome they were stoln: The Court Sentenc<sup>d</sup> s<sup>d</sup> Gross to bee set in the Stocks for one hour & to bee whip't with ten Stripes or to pay twenty Shillings in mony as a fine to the County & Fees of Court standing committed untill the Sentence bee performed.

KING Fin<sup>d</sup> 40<sup>s</sup>

Abigail King bound over to this Court to Answer for her being taken abroad at an unseasonable time of the night by the watch, at which time Shee was in drinck & entertaining mens Servants & others at the [ 175 ] same time at her house a drincking of which Shee was convict in Court: The Court Sentenc<sup>d</sup> her to pay Forty Shillings in mony as a Fine to the County & Fees of Court standing committed untill the Sentence bee performed.

SMITHS Sent<sup>n</sup>

Joseph Smith bound over to this Court to Answer for his being founde by the watch in the house of Abigail King in Boston amongst others at an unseasonable time of the night, where they had been drincking, of which hee was convict in Court: The Court having considered of his offence herein & his night walking Sentenc<sup>d</sup> him to bee sent to the house of correction or to pay twenty Shillings in mony



as a fine to the County & Fees of Court Standing committed untill the Sentence bee performed: Ioseph Smith appealed to the next Court of Assistants & the s<sup>d</sup> Smith as principall in ten pounds & Richard Brookes & W<sup>m</sup> Gilbert as Sureties in five pounds apeice acknowledged themselves respectively bound to . . . prosecute his appeale . . . & that in the meane time hee should bee of good behavio<sup>r</sup>

STASEY Fin<sup>d</sup> 20<sup>s</sup>

Iohn Stasey bound over to this Court to Answer for his being founde by the watch in the house of Abigail King in Boston amongst others at an unseasonable time of the night, where they had been drincking of which hee was convict in Court The Court Sentenc<sup>d</sup> him for his night walking & other disord<sup>rs</sup> to bee sent to the house of correction or to pay twenty Shillings in mony as a Fine to the County & Fees of Court standing committed untill the Sent<sup>a</sup> bee perform<sup>d</sup>

EGGERTON Fin<sup>d</sup> 40<sup>s</sup>

Peter Eggerton bound over to this Court to Answer for his abusing Cap<sup>t</sup> Iohn Wiborn & instigating others with himselfe to assaile & beate the s<sup>d</sup> Wiborn of which hee was convict in Court The Court Sentenc<sup>d</sup> him to pay three pounds in mony as a Fine to the County with charge of prosecution & Fees of Court & to give in bond w<sup>th</sup> Sureties of Forty pounds for the good behavio<sup>r</sup> till the next Court of this County standing committed untill the Sentence bee performed Vpon his humble petition the Court afterwards remitted twenty Shillings of his Fine: And the s<sup>d</sup> Eggerton as principal in twenty pounds & John Morss & John Buttolph as Sureties in 10<sup>li</sup> apeice acknowledged themselves respectiely bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Eggerton should bee of good behavio<sup>r</sup> till the next Court of this County & then appeare [176]

PEGGY Fin<sup>d</sup> 20<sup>s</sup>

Edward Peggy bound over to this Court to answer for his assailing & beating Cap<sup>t</sup> Iohn Wiborn of which hee was convict in Court The Court Sentenc<sup>d</sup> him to pay twenty Shillings in mony as a Fine to the County with charges of prosecution & Fees of Court & to give

in bond w<sup>th</sup> Sureties of Forty pounds for his good behavio<sup>r</sup> till the next Court of this County standing committed untill the Sentence bee performed & accordingly the s<sup>d</sup> Peggy as principall in twenty pounds & Roger Dubledee & Henry Dedicot as Sureties in ten pounds apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion the s<sup>d</sup> Edward Peggy shalbee of good behavio<sup>r</sup> till the next Court of this County & then appeare if in the Country.

SMITH Fin<sup>d</sup> 40<sup>s</sup>

Joseph Smith bound over to this Court to Answer as aboues<sup>d</sup> The Court Sentenc<sup>d</sup> him to pay Forty Shillings in mony as a Fine to the County with charge of prosecution & Fees of Court & to give in bond w<sup>th</sup> Sureties of Forty pounds for his good behavio<sup>r</sup> till the next Court of this County standing committed untill the Sentence bee performed & the s<sup>d</sup> Joseph Smith as principall in twenty pounds & Joseph Webb & Peter Goulding as Sureties in ten pounds apeice acknowledged themselves respectiuely bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion the s<sup>d</sup> Smith should bee of good behavio<sup>r</sup> untill the next Court of this County & then appeare.

SALMON discharged

Clemont Salmon bound over to this Court to Answer for his abusing of the watch in Boston, it not being proved against him hee was discharged

HICKSON Fin<sup>d</sup> 40<sup>s</sup>

Walter Hickson bound over to this Court to Answer for his railing & scurrilous Language & Swearing of all which hee was convict in Court The Court Sentenc<sup>d</sup> him to bee whip't with fifeteen Stripes or to pay Forty Shillings in mony as a Fine to the County & Fees of Court standing committed untill the Sentence bee perform<sup>d</sup>

BEDWELL Fin<sup>d</sup> 40<sup>s</sup>

Mary Bedwell bound over to this Court to Answer for her railing & scurrilous Language & bad Speeches of which Shee was convict in Court The Court Sentenc<sup>d</sup> her to bee whip't with fifteen Stripes or to pay Forty Shillings in mony as a Fine to the County & Fees of Court standing committed untill the Sentence bee performed [177]

MARSH Sent<sup>a</sup>

Iohn Marsh bound over to this Court to answer for his concealing or conveying away severall hides of Leather being seized by the Sealers of Leather in Boston in his custody & hee promising to Secure them for the Sealers, all which hee owned in Court, onely s<sup>d</sup> the Owner of the hides fetcht them away: The Court Sentenc<sup>d</sup> him to return the same hides soe seized unto the s<sup>d</sup> Sealers of Leather or in default thereof to pay them six pounds in mony & Fees of Court.

## ALICE THOMAS respited

Alice Thomas being presented by the grand jury & summon<sup>d</sup> to attend this Court to Answer the same, Shee being called answer was made Shee was soe lame as disenabled her for comming; vpon which the Court respites the presentm<sup>t</sup> till the next Court of this County.

## GILLIAN KNITE respited

Gillian the wife of Richard Knite being also presented by the grand jury & called to answer the same, answer was made Shee was very sick in bed, upon which the Court respited her presentment till the next Court of this County

WING Fin<sup>d</sup> 5<sup>li</sup>

Ioseph Wing & Iohanna his wife being both bound over to this Court, to answer for their committing of Fornication before marriage, of which they were convict by their own confession in Court The Court Sentenc<sup>d</sup> them both to bee whip't, the s<sup>d</sup> Ioseph with twenty Stripes & Iohanna with ten, or to pay five pounds in mony as a Fine to the County with Fees of Court standing committed untill the Sentence bee performed.

HALLS Sent<sup>a</sup>

William Hall convict by his own confession in Court of stealing severall goods out of the house of William Long in Boston belonging to the s<sup>d</sup> Long & others (for whome hee is Attourney) to the vallue of six pounds; The Court Sentenc<sup>d</sup> the s<sup>d</sup> Hall to bee severely whipped with twenty stripes & to return to William Long the goods stoln againe as also to pay the s<sup>d</sup> Long in behalfe of himselfe & the rest

concerned the Summe of twelue pounds, being that threefold restitution that the Law requires hee the s<sup>d</sup> Long paying thereout y<sup>e</sup> charge of prosecution & Fees of Court s<sup>d</sup> Hall standing committed untill the Sentence bee performed.

#### Vring admonisht

William Vring being committed for being confederate with William Hall in stealing goods out of the house of William Long, hee haveing absented himselfe w<sup>ch</sup> gaue matter of suspicion thereof, but the Fact not being proved The Court Sentenc<sup>d</sup> him to bee admonished & to pay Fees of Court & prizon standing committed untill the Sentence bee performed. [178]

#### LEADERS Sent<sup>a</sup>

Thomas Leader convict in Court for stealing mony & other things from Sarah Phippeny to the vallue of eight shillings & four pence breaking open her box in the house of his master William English in Boston on the Sabbath day The Court Sentenced him to bee whip't with fifteen stripes & to pay unto Sarah Phippeny five & twenty Shillings in mony being that threefold restitution that the Law requires & to pay Fees of Court standing committed untill the Sentence bee performed.

#### DOILY discharg<sup>d</sup>

Iohn Doily of Brantery being presented for selling Liquo<sup>rs</sup> & Sider to the Indians The presentm<sup>t</sup> not being proved hee was discharged.

#### MARY PLUM present<sup>d</sup>

Mary Plum the daughter of Iohn Plum, being present<sup>d</sup> for haveing a Childe it not appearing Shee was ever married & a Summons going out for her appearance at the Court to answer for the same, The Constable made return hee could not finde her.

#### HUDSON LEVERETTS Fine remitted

In Answer to the petition of Hudson Leverett The Court was pleased to remit the Fine of one hundred pounds to the County, imposed on him by the last Court of this County.



## HOLTS bond Forfited

Thomas Holt, not appearing upon due calling to Answer according to his bond, both his & his Sureties bond was declared forfeited.

## WILMOTS bond Forfited

Nicholas Wilmot not appearing upon due calling to Answer according to his bond Dated 27 8<sup>mo</sup> 1673. The Court declared his bond forfeited.

## BRADLY'S bond Forfited

Richard Bradley not appearing upon due calling to answer according to his bond Dated 27 8<sup>mo</sup> 1673. The Court declared his bond forfeited.

The Court adjourned to Novemb<sup>r</sup> 6<sup>th</sup> 1673. at nine a clock in the Morning. [179]

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Novemb<sup>r</sup> 6<sup>th</sup> 1673

The Court met according to Adjournment

Present 1673

IN<sup>o</sup> LEVERETT Esq<sup>r</sup> Go:

SIMON BRADSTREET Esq<sup>r</sup>

W<sup>m</sup> STOUGHTON Esq<sup>r</sup>

EDW: TYNG Esq<sup>r</sup>

THO<sup>s</sup> CLARKE Esq<sup>r</sup>

GOLDS bond remitted upon paim<sup>t</sup> of 40<sup>s</sup>

In answer to the petition of Mary Gold, The Court (upon the s<sup>d</sup> Mary her paying of Forty Shillings in mony to the Treasuro<sup>r</sup> of the County of Suffolke) remitted the forfeiture of a bond of five pounds declared against her Son Benjamin Gold & her Son in Law Sammuell Greenwood at the last Court of this County.

SMITH Fin<sup>d</sup> 5<sup>li</sup>

Christopher Smith bound over to this Court to answer for his selling of brandy & strong beere without Licence which hee Owned in Court. The Court Sentenc<sup>d</sup> him to pay five pounds in mony as a Fine to the County & Fees of Court standing committed untill the Sentence bee perform<sup>d</sup>

Court Order ab<sup>t</sup> BIRDS

Whereas there is a motion made to this Court by Thomas Bird of Dorchester for the division of the Estate of his Late mother, wherein hee & his bretheren cannot agree among themselves: The Court Orders & appoints that Thomas Iohn & Iames Bird appeare before this Court this day Seven night after Lecture upon their adjournment to give their severall reasons & pleas upon that Account & hereof not to faile Dated in Boston this 6<sup>th</sup> of 9<sup>br</sup> 1673.

Court Order to m<sup>r</sup> GIBBS

The Court Orders that m<sup>r</sup> Benjamin Gibbs attend this Court upon their adjournment on thursday next to answer a complaint exhibited against him by Henry Ashton.

## Court Order for BRADISH

The Court Orders that Cap<sup>t</sup> Thomas Savage & m<sup>r</sup> Peter Bracket who haue rendred an Account to this Court of the Estate of the Late widow Bradish deceased, which is in their hands by vertue of an order of Generall Court) doe forthwith pay thereout unto Iohn Bradish her sonn three pounds & Fourteen Shillings being for Funerall charges according to his Account given into this Court.

The Court Adjourned to Thursday the 13<sup>th</sup> of Novemb<sup>r</sup> at nine a clock in the morning. [ 180 ]

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Novemb<sup>r</sup> 13<sup>th</sup> 1673

The Court met according to Adjournment.

Present

IN<sup>o</sup> LEVERETT Esq<sup>r</sup> Go<sup>r</sup>

SIMON BRADSTREET	} Esq <sup>rs</sup>
EDW: TYNG	
W <sup>m</sup> STOUGHTON	
THO: CLARKE	

Court Ord<sup>r</sup> ab<sup>t</sup> BRADISHES Estate

Vpon the motion of Iohn Bradish one of the administrato<sup>rs</sup> to the Estate belonging to his Late mother Vasthi Bradish deceased; The Court Orders that Cap<sup>t</sup> Thomas Savage & m<sup>r</sup> Peter Bracket deliver

the Estate of the s<sup>d</sup> Vasthi Bradishes in their hands (according to their Account delivered into Court) unto the Administrato<sup>rs</sup> to the s<sup>d</sup> Estate, they giving them a discharge for the same & being accountable to the Court of this County w<sup>n</sup> called to it,

#### Freemen Sworn

Mr Peter Lidget m<sup>r</sup> Sammuell Shrimpton & m<sup>r</sup> Eliakim Hutchinson tooke the Oath of Freedom of this Colony.

#### Court Ord<sup>r</sup> upon m<sup>r</sup> ROCKS Acco<sup>t</sup>

This Court having perused the Account given into Court upon Oath by m<sup>r</sup> Ioseph Rock 31<sup>th</sup> of Ianuary 1672 concerning the late Estate of m<sup>r</sup> Iohn & m<sup>rs</sup> Martha Coggan deceased & what that Estate stands charged with by him; as also the Objections made against that Account & his Answer thereunto: The Court on due consideracion of the same doe take off & rebate the Summe of Seventy eight pounds fifteen Shillings from m<sup>r</sup> Rocks charge of debt made against the s<sup>d</sup> Estate in that Account which Summe of Seventy eight pounds fifteen shillings being added to two hundred Sixty nine pounds eighteen shillings four pence; which hee makes to bee the ballance of that Account as soe much due from him to that Estate, makes up the Summe of three hundred Forty eight pounds thirteen shillings & four pence The Court Orders & appoints m<sup>r</sup> Ioseph Rock to pay in mony or such pay as is equivalent thereunto unto the Guardians of the Children of the late m<sup>r</sup> Thomas Robinson; as also to pay to the s<sup>d</sup> guardians what rent or other incomes are due to that Estate since his Account made up, which hee hath received, in the same specie hee received it; & m<sup>r</sup> Rock fulfilling this Order is discharged from his administration.

[ This Order is “explained” at a later session of 1674, p. 437, below.]

#### Division of BIRDS Estate

Upon the motion of Thomas Bird to this Court for a dividend of the Estate left by his late mother Anne Bird of Dorchester Widow deceased (who dyed intestate) [ 181 ] between her three onely Children, being all Sonns: The Court haveing given the other two Sonns oppertunity to present what they could in reference to their interest

in or claime to s<sup>d</sup> Estate & haveing heard & considered what was presented in the case Doe Order that the s<sup>d</sup> Estate bee devided into two equall parts, the s<sup>d</sup> Thomas Bird being the eldest Sonn to have the one part thereof & the other part to bee equally devided between the two younger bretheren.

#### Division of INCREASE ATHERTONS Estate

Upon the motion of the Children of Major Gen<sup>l</sup> Humphry Atherton to this Court concerning a dividend of the Estate of there late brother Increase Atherton deceased The Court Orders that all just debts & necessary charges being first paide & discharged, the s<sup>d</sup> Estate bee equally devided amongst the Surviving Children of the s<sup>d</sup> Major Atherton.

#### Court Order ab<sup>t</sup> BERNARDS Adm<sup>rs</sup>

The Court Orders & appoints that the Administrato<sup>rs</sup> to the Estate of the late Sammuell Bernard deceased as also m<sup>r</sup> Iohn Hayward & y<sup>e</sup> s<sup>d</sup> m<sup>r</sup> Bernards daughter attend the next Court of this County to give in an Account of saide Estate

#### Court Ord<sup>r</sup> ab<sup>t</sup> Milton highway respited

The Court respites the Order upon the return of the Committee about a highway in Milton passed the last County Court & Order that notice bee given to the persons concerned therein & also to the s<sup>d</sup> Committee to attend the next Court of this County.

#### m<sup>r</sup> GIBBS bond

M<sup>r</sup> Benjamin Gibbs as principall in one hundred pounds & Wm Dawes & Richard Knight as Sureties in Fifty pounds apeice acknowledged themselves respectiuey bound in Court to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that hee the s<sup>d</sup> Benjamin Gibbs should personally appeare at the next Court of this County to answer the charge exhibited against him at this Court by m<sup>r</sup> Henry Ashton & that hee should abide the Order of the Court therein: And L<sup>t</sup> Richard Way as Attourney to s<sup>d</sup> Ashton obliged himselfe in open Court then to appeare & prosecute the s<sup>d</sup> charge.

[In connection with the Ketch Recovery cases.]



Court Order ab<sup>t</sup> HOLDBROOKES Estate

In Answer to the petition of Miriam Holdbrooke Widow The Court Orders that the s<sup>d</sup> Widow haue the bed Shee lyeth on & the Furniture belonging to it & Forty Shillings out of the Estate of her late husband Daniell Holdbrooke deceased in movables & that Deacon Parcke & m<sup>r</sup> Thomas Weld bee a Committee to set out the rest of that Estate to the Credito<sup>rs</sup> according [ 182 ] to proporcion between this & the next Court of this County & then to make a return of what they doe therein.

Court Order ab<sup>t</sup> Manaticot Bridge

The Court Orders the Select men of Brantery forthwith to build a Substantiall horsebridge over Manaticot River in the way from Brantery to Weymouth by the next Court of this County upon the penalty of ten pounds & then to bring in their Account of charge & the Court will consider thereof whether it bee to bee born by the Town or the County.

Court Ord<sup>r</sup> ab<sup>t</sup> SILVEST<sup>rs</sup> charge

The Court Orders & appoints that the Select men of Milton pay unto William Salter the summe of seven & Forty Shillings for charges about Dinah Silvester during her imprisonment Lying in there & providing cloathing for her Childe, unless they can finde an Estate of hers to Satisfy it.

PECK &<sup>a</sup> ag<sup>t</sup> PAGE vid: p. 146

Thomas Peck & Iohn Heyman or either of them plaint<sup>s</sup> ag<sup>t</sup> Iohn Page Defend<sup>t</sup> in an accion of the case for breaking his Engagement of One hundred pounds by exchange of a peece of mony sterling in that the s<sup>d</sup> Page hath not performed an Award under the hand of Leiftenant Richard Cooke & Iohn Williams bearing date the 23 day of Iuly 1672 & other due damages according to Attachm<sup>t</sup> Dat. May 15<sup>th</sup> 1673. This Accion was tryed the last County Court but judgment not Entred till this Court according to Law the Defend<sup>t</sup> being out of this Iurisdiction: . . . The Iury . . . founde

for the plaint. one hundred pounds according to bond & costs of Court.

This Court dissolved Novemb<sup>r</sup> 13<sup>th</sup> 1673

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Present SIMON BRADSTREET EDWARD TYNG and THO: CLARKE  
Esq<sup>rs</sup> January 20<sup>th</sup> 1673@

ATKINSON to PENN

Theoder Atkinson jun<sup>r</sup> personally appeared & acknowledged a judgment against himselfe & Estate for Fifty nine pounds in mony (due to the Estate of the Late Elder Iames Penn) to the Widow & present Executrix of the last will of s<sup>d</sup> Penn. as Attests Js<sup>a</sup> Addington Cler  
£:59:0:0: mony

m<sup>r</sup> Anth<sup>o</sup> Stoddard personally appeared Nov<sup>r</sup> 19: 1674 & acknowledged that hee had rec<sup>d</sup> full Satisfaction of this Iudgm<sup>t</sup> in behalfe of m<sup>rs</sup> Penn as Attests Js<sup>a</sup> Addington Cler [ 183 ]

At a County Court held at Boston January 27<sup>th</sup> 1673

Present

IOHN LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>

SIMON BRADSTREET	} Esq <sup>rs</sup>
EDW: TYNG	
W <sup>m</sup> STOUGHTON	
THO: CLARKE	

Grand jury Sworn

John Sweete	Cap <sup>t</sup> Ri: Brackett	
Habakkuk Glover	Edw: Morrice	George Lane
W <sup>m</sup> Holloway	Edw: Richards	Tho <sup>s</sup> Lincoln
Edw <sup>d</sup> Grant	Ralph Day	Cap <sup>t</sup> Geo: Barber
Iohn Weld	Edw <sup>d</sup> Blake	W <sup>m</sup> Sumner sen <sup>r</sup>
	George Fry	Isaac: Jones

Iury of Tryalls Sworn

Tho <sup>s</sup> Battelle	Nathan <sup>ll</sup> Wilson	Tho <sup>s</sup> Andrews
W <sup>m</sup> Whitwell	In <sup>o</sup> Dean	Matthew Cushing
Benj <sup>n</sup> Negus	X <sup>to</sup> pher Webb	Tho <sup>s</sup> Mason
Tho <sup>s</sup> Halley	Simon Whitmarsh	Clemont Maxfeild

ASHTON ags<sup>t</sup> GIBBS

Henry Ashton plaint. agas<sup>t</sup> Benjamin Gibbs Defend<sup>t</sup> in an accion of the case for that the s<sup>d</sup> Benj<sup>n</sup> Gibbs hath pursued him the s<sup>d</sup> Ashton with a warrant which hee called an hue & cry & contrary to Law & the Liberty of an English subject did in a riotous manner violently seize the person of the s<sup>d</sup> Ashton as hee was in his Lodging at the house of one Iohn Woodcock an Ordinary upon the road in the government & pattent of Plimouth & for that the s<sup>d</sup> Gibbs did there binde him the s<sup>d</sup> Ashton & carried him in a Cart out of the s<sup>d</sup> Govern<sup>t</sup> & soe brought him Like a Fellow & committed him s<sup>d</sup> Ashton to the prison in Boston to the great disparagment & damage of him the s<sup>d</sup> Ashton more then five hundred pounds & other due damages according to Attachm<sup>t</sup> Dat. the seventh day of Novemb<sup>r</sup> 1673. . . . The Iury . . . founde for the plaint. for the illegall or unjust molestations of m<sup>r</sup> Henry Ashton & all those damages that come thereby ten pounds in current pay & costs of Court. The Defend<sup>t</sup> appealed from this judgm<sup>t</sup> to the next Court of Assistants

& the s<sup>d</sup> Benj<sup>a</sup> Gibbs as principall in twenty pounds & James Brading & Iohn Keen as Sureties in ten pounds apeice acknowledged themselves respectiely bound to . . . prosecute his Appeal . . .

[To recapitulate this protracted litigation, which now reaches its most interesting point, Ashton was a young Liverpool merchant who sailed from Liverpool for Virginia on the ketch *Recovery*, Captain John Bonner, in November, 1671. Ashton had with him sundry goods and a number of indented servants. In consequence of Bonner's rascality and long delays, Ashton sued him for damages after arrival at Boston, and was awarded 70*l* damages by this Court (*Ashton v. Bonner*, above, p. 141). Subsequently the two parties agreed under bond to submit their differences to arbitration. The arbitrators made an award in favor of Ashton, which Bonner refused to honor; consequently Ashton sued him for the performance of his bond; but the jury decided in favor of Bonner (*Ashton v. Bonner and Everell*, above, p. 292). In order to explain subsequent proceedings which led to this suit against Gibbs, I suppose that Bonner must have instituted a new suit against Ashton, for the latter was under some bonds or judgment when, in the autumn of 1673, after endeavoring for sixteen months to recover damages, he decided to leave the Bay jurisdiction and proceed to his original destination, Virginia. During his sojourn at Boston, Ashton had become friendly with a young shipowner, named John Saffin, and arranged to leave for Virginia on one of Saffin's vessels from Narrangansett Bay, in order to escape the Boston authorities. Gibbs, Captain Bonner's attorney, hearing of Ashton's intention to abscond, had himself made "Marshalls Deputy" in order to serve an attachment on Ashton, whom he found "standing in the porch in company with m<sup>rs</sup> Saffin" in Boston on Saturday afternoon, November 1, 1673, and arrested him, as he subsequently deposed (S. F. 1341.38).

Whereupon M<sup>rs</sup> Saffin upraided the sd. Ashton for not withdrawing himselfe when Shee winked upon hi[m] & sayde m<sup>rs</sup> Saffin seeming much disquieted about the matter this Deponant spent a considerable time to perswade her by arguments from the Equity of the proceedings after which went into that roome of sd. m<sup>r</sup> Saffins house next m<sup>r</sup> w<sup>m</sup> Tailo<sup>rs</sup> & there tooke a Coppie of one of the Attachments & read the other unto sd. Ashton while hee tooke a Coppy thereof or as much as hee pleased . . . after which tarrying a considerable while within & neare the sd. house; for m<sup>r</sup> Saffin comming home the Sabbath approaching this Deponant suspended proceeding any further until the Sabbath was over, onely upon the consideracion that hee might not make any disturbance upon the Sabbath. . . .

Sabbath over, at sundown on the Lord's day, Gibbs returned to Saffin's house:



But s<sup>d</sup> Saffin going up into his Chamber pretending to call s<sup>d</sup> Ashton, returned & s<sup>d</sup> he was walk't forth; this Deponant replied hee expected better from him then that he should escape or words to that purpose, unto which s<sup>d</sup> Saffin answered y<sup>t</sup> hee was but gone to a house in the Town where hee used to goe (as hee supposed) this Deponant declared if hee s<sup>d</sup> Ashton did escape hee should bee fore't to pursue him with huy and cry. m<sup>r</sup> Saffin answered that hee should bee sorry if any such thing should overtake any that had resided with him; but for his part hee would haue nothing to doe with it, resolving not to Engage against his neighbour for the sake of any stranger; this Deponant awaiting a considerable time in company with s<sup>d</sup> m<sup>r</sup> Tayler and Saffin and Aston not appearing; hee this Deponant made his address to the Worpshipfull m<sup>r</sup> Simon Bradstreet Esq<sup>r</sup> and declaring the matter unto his worship obtained the favour of a huy and cry; with which the next morning hee persued s<sup>d</sup> Ashton and further saith not.

A copy of the warrant follows (S. F. 1341.2):

To the Constables of Rocksbury Dedham Medfeilde and Mendham or either of theire Deputies.

Whereas Henry Ashton of the age of about 30. yeares a tall wellset man of brownish haire and fresh complexion being under an arrest hath made an Escape: These are therefore in his Ma<sup>ties</sup> Name to will and require yow to make diligent search in yo<sup>r</sup> severall Towns for the s<sup>d</sup> person and haveing apprehended him, let him bee conveyed safely to the Marshall of Suffolke or his Deputy & the charges thereof shalbee satisfied by m<sup>r</sup> Benjamin Gibbs of Boston m<sup>cht</sup>. and hereof yow are not to faile. Dated 3. Novemb<sup>r</sup> 73.

Simon Bradstreet Assist . . .

Ashton hired a horse from one Peter Egerton, who delivered it at Saffin's house after sunset on the Lord's Day, November 2 (depositions S. F. 1341.50), when Ashton proceeded with a "pilot" on the old road to Providence, by way of "Uncaty," i. e., Milton (S. F. 1341.58). Benjamin Gibbs followed hard on Ashton's heels. Not knowing the way, he hired at Dedham one Nathaniel Chickering to pilot him the way to Rehoboth (Chickering's deposition in S. F. 1341.39). They passed along the road to Wading River, in the present town of Mansfield, and were then outside the Bay jurisdiction, in that of the Plymouth Colony. Proceeding on their way, they learned that Ashton was at the first house across the Plymouth line (S. F. 1341.48), a tavern kept by John Woodcock on the Ten Mile River, in the present town of Attleboro.<sup>1</sup> Halting there to read the warrant, they proceeded to the village of Rehoboth in order to obtain authority to arrest Ashton in Plymouth territory. Nathaniel

<sup>1</sup> Then a part of the "Rehoboth North Purchase" which Thomas Willet and associates purchased of Massassoit's son Alexander in 1661. A traveller in 1704 "Got to y<sup>e</sup> House of old Woodcocks, now Inhabited by one Slack, at Attleberry, w<sup>r</sup> we stopt y<sup>e</sup> Heat of y<sup>e</sup> Day." 1 Proceedings Massachusetts Historical Society xiii. 250. It was half a day's journey from Billings's tavern in Dedham.

Paine, the constable of Rehoboth, handed over his emblem of office, a "black staffe with a brazen head" to Nathaniel Woodcock, the seventeen-year old son of the tavern keeper. The party then returned to the tavern.

What occurred at Woodcock's may first be told in the words of Ashton's petition to the Governor and General Court of Massachusetts Bay, dated November 6, 1673 (S. F. 1341.13):

That on Munday the third day of this instant Novemb<sup>r</sup> yo<sup>r</sup> Complainant being at the house of one Iohn Woodcock in company with Cap<sup>t</sup> Tho: Willet, in order to proceed my Voiage to Virginia in a Vessell belonging to Iohn Saffin that was ordered to stay for my comming at Road Island M<sup>r</sup> Benjamin Gibbs came into the sd. house with another man, whome he immediatly commanded in his Maj<sup>ty</sup>'s Name to apprehend mee yo<sup>r</sup> complainant, Saying this is the man, & that hee sd. Gibbs had a hue & cry to that purpose: upon which Cap<sup>t</sup> Willet desired to see the hue & cry & asked the fellow that came with M<sup>r</sup> Gibbs who made him a Constable, to which sd. Gibbs answered that the Constables Staffe was sufficient warrant for him, often saying that hee sd. Gibbs would beare him out in what hee did: But yo<sup>r</sup> complainant often desired to see his power and told him that, if hee had power hee would goe before any person in Authority within the Government without any resistance: but the sd. Gibbs denied to shew any power or hue & cry & soe remained there that night; Cap<sup>t</sup> Willet having told him that represented the Constable of Rehoboth that hee would pass his word that yo<sup>r</sup> complainant should bee forthcomming next morning; in the meanetime (as yo<sup>r</sup> complainant is informed) the sd. Gibbs sent a man away to the Constable of Rehoboth & got a deputation from him to apprehend a fellow: And the next morning being Tuesday the sd. Gibbs commanded yo<sup>r</sup> complainant to goe with him, I again told him that I looked upon him to bee but as Benjamin Gibbs, & that if hee would carry mee by warrant before any person in place I would goe along with him; otherwise I would goe about my own buisness; then the sd. Gibbs kept yo<sup>r</sup> complainant all that day as a prisoner at sd. Woodcocks: And after Sunset hee again commanded mee to goe with him as his prisoner to Boston; to w<sup>ch</sup> yo<sup>r</sup> complainant replied that I was in the Kings Dominions in another Government & that if hee had any thing to say against mee I was ready to answer him before Authority there to to bee convicted of what crime hee could Lay to my charge; And if hee would not doe it that seeing he had kept mee all day there, soe hee would let mee bee there still next morning it being not the manner in England to carry prison<sup>rs</sup> though fellons but between Sun and Sun to which sd. Gibbs replied that it was his pleasure that I should goe then & that they were not to bee taught by mee and soe with all violence hee & one Chickering & some others fell upon mee & haling mee along a good way from the house hee then hired four or five Indians to assist him who also laide violent hands upon mee & bound mee hand & foote with cords & Stirup Leathers & soe tooke mee & carried mee away amongst five of them: After that before they had got mee out of Plimouth Government they tooke mee yo<sup>r</sup> complainant & bounde mee in a chaire & then carried mee to the Line, & having sat mee beyond Plimouth bounds the sd. pretended Constable told sd. Gibbs that hee had done his Office & that hee would carry mee noe further: Yet hee came again & carried mee in the chaire a

little further & soe left mee bound to the chaire, then I put my hands as they were bound down to my Leggs & unbound them and again told m<sup>r</sup> Gibbs that if he would yet shew me any power by virtue whereof hee kept mee there I would submit if he would unloose mee, the which he refused onely hee untied my hands & left mee still tyed about the middle to the chayr then I tooke my knife out of my pocket and cut the stirrup leather that was about my middle & soe got loose & went into Plimouth Colony and so came again about 8. or. 9. a clock in the night to the sd. Woodcocks house; where I desired Entertainment for my mony & soe went to bed: The next Morning being wednesday the sd. pretended constable came into the roome where I lodged & told mee that they waited below for mee; & assoon as I was up the sd. Gibbs (before I had eat or dranck) fell upon mee & the rest with him threw mee upon the Table & in a barbarous & inhumane manner bound mee again hand & foote with great hairy ropes cords & stirrup Leathers & threw mee into a Cart, & the sd. Gibbs bound mee yo<sup>r</sup> complainant by the middle in the Cart where I was joulted too & again untill they had brought mee out of the Government, where the fellow that draue the Cart stood still & saide that hee was now as far as theire bounds & would goe noe farther then sd. Gibbs draue the Cart himselfe a little way & the sd. Fellow came after to whome m<sup>r</sup> Gibbs saide if hee would driue the Cart along farther hee would beare him harmless to whome the sd. Carter replied that if sd. Gibbs would, hee would driue along the Cart & soe upon his promiss did: After this sd. Gibbs told mee that if I would pawn my ring, that I would goe along quietly to the next Constable I should ride upon a horse & they would untie my Leggs; which accordingly I did and soe came to the next Constable, who hath brought mee as hee saith by virtue of a hue & cry which hee read to mee & told mee that hee was thereby Ordered to deliver mee to the Marshall or his Deputy of Boston, which m<sup>r</sup> Gibbs sd. was himselfe, who committed mee last night to the custody of the prison keeper.

Thus may it please yo<sup>r</sup> Hono<sup>r</sup> yo<sup>r</sup> Complainant by these intollerable abuses & almost unheard of cruell usage is wholly taken off his buisness being bound to Virginia as afores<sup>d</sup> in a Vessell belonging to m<sup>r</sup> Saffin, where my goods are; which vessell staies at present onely upon mee to my great detriment besides the irreparable staine to my Credit & reputation in all places where it shalbee reported I was pursued like a Fellow or traito<sup>r</sup> with hue & cry occasioned by the afores<sup>d</sup> Gibbs his illegall proceedings contrary to the Laudable customs of o<sup>r</sup> Nation & deare bought Liberties of Englishmen; For all which yo<sup>r</sup> Complainant in all humility Supplicates yo<sup>r</sup> Hono<sup>r</sup> for redress & Subscribes himselfe

Yo<sup>r</sup> Hono<sup>rs</sup> most humble Servant & Suppliant

Henry Ashton

1673

On the other side, we have among others the depositions of Chickering and of the temporary bearer of the black staff:

S. F. 1341.39

Boston: 6: 9: 73.

Nathaniell Chickring aged 25 yeares or thereabouts testifieth & saith that the 3<sup>d</sup> of this instant m<sup>r</sup> Benjamin Gibbs came to my house in Dedham desiring mee to pilot him the way to Rehoboth; upon his request I went with him; in the way hee informed mee that hee went in pursuit of one Henry Ashton who made an



Escape from under an arrest; wee passed along the road to Wading River & from thence to ten mile River without any news of Ashton & passing on o<sup>r</sup> way toward Swanzey were informed the s<sup>d</sup> Ashton had taken up his Lodging at m<sup>r</sup> Iohn Woodcocks at ten mile River. upon which wee returned unto m<sup>r</sup> Nathaniell Paines one of the Constables of Rehoboth, unto whome the s<sup>d</sup> m<sup>r</sup> Gibbs declared his buisness; having been first informed that there was noe higher Authority in that Town; the s<sup>d</sup> m<sup>r</sup> Paine deputed Nathaniell Woodcock his Deputy & Deliuered him his staffe to apprehend the s<sup>d</sup> Ashton & carry back into the Massachusetts Colony, whereupon wee all returned to the house of the s<sup>d</sup> Woodcock & the Constable Deputy declared that hee did apprehend the s<sup>d</sup> Ashton as his prisoner and secured his Armes. upon which the s<sup>d</sup> Ashton declared as in anger, that hee should know us again, or words to that purpose; next Morning the sd Constable Deputy required Ashton to mount a horseback, Ashton refused; where upon wee suspended untill the sd. Gibbs had dispatch't a Messenger to goe to m<sup>r</sup> Brown of Swanzey; upon the return of the Messenger it being almost Sunset the Constable Deputy required s<sup>d</sup> Ashton to mount a horsback, the which hee refused to doe daring any man that should touch him or lay hands on him; but the Constable Deputy requiring us in his Maj<sup>ties</sup> Name to Assist him, wee laide hands on the sd. Ashton & according to Constable Deputy command endeavoured to mount him a horseback: Ashton by fighting and striving endeauored to resist; notwithstanding which wee constreining him along towards Wading River by command he still continuing doing mischeife or damage to seuerall persons, noe man returning him blowes or provoking words in my hearing, perswading him to yeilde himselfe and either to goe or ride on horseback; declaring that what wee did was in Obedience to his Maj<sup>ties</sup> Officer: I this Deponent hee struck on forehead with something in his hand, which I apprehend was a stone, therewith drawing blood, in which time notwithstanding his violent carriage hauing then bound him, wee did in o<sup>r</sup> armes & in a chayre carry him into the Massachusetts Colony by the Constables Order the s<sup>d</sup> Gibbs to ease Ashton being striving & struggling hauing his hands bound with a stirrup did take his own neck-cloth from his Neck least the band should hurt him but Ashton with his teeth did tare it, at last wee brought him on this side the Line as they declared into o<sup>r</sup> Colony, where the Constable Deputy of Rehoboth deliuered him unto the sd Gibbs Marshall Deputy of Massachusetts Colony of the County of Suffolke, who accordingly received him, Ashton engaging his reputation that if hee would unbinde him hee would not stir, s<sup>d</sup> Gibbs unlooseing his hands that hee would not run from him; but his hands being unbound hee suddenly escaped back unto the other side of the Pattent Line & then saide Gentlemen now I care for none of you, saying that the Constable had done his worke & they had nothing further to doe with him more & soe returned to m<sup>r</sup> Iohn Woodcocks; where the Constable Deputy with o<sup>r</sup> selves that were his assistance followed him & the Constable again apprehended him & the next morning the sd. Constable Deputy required us to lay hands on him, for the sd. Ashton saide Gentlemen I suppose you haue some plot in hand let mee see who dare lay hands on mee, by command wee closed in upon; but hee slipped out of o<sup>r</sup> hands betwixt the table & a wall & tooke up a cup & a pot in his hands holding out at us saying lay hands now upon mee on yo<sup>r</sup> perill then wee inclosed upon him and bound him and brought him in a Cart untill that we were in o<sup>r</sup> Colony; after this sd. Ashton desired to bee unbound delivering his ring as a pledge of his demenure as a prison<sup>r</sup> & soe mounted a



horsback & came along with us to Boston Further the sd. Ashton proffered sd. Gibbs to goe with him before any Authority in that Iurisdiction of Plimouth.

Sworn in Court: 6: 9: 73. as Attests

Js<sup>a</sup> Addington Cler.

S. F. 1341.35

Nathaniell Woodcock aged Seventeen Yeares or thereabout being Supœned Examined and Sworn Saith

That on the third day of this month of Novemb<sup>r</sup> being Munday in the afternoon one m<sup>r</sup> Benjamin Gibbs of Boston came with Nathaniell Chickering to this Deponents Fathers house, who keeps an Ordinary upon the road in the Colony of Plimouth about ten mile from Rehoboth & sitting on horseback at the dore, hee enquired for one Henry Ashton, whom hee sd. was run away under Arrest & that hee sd. Gibbs had a hue & cry for him which hee read and soe hasted away towards Rehoboth aforesd. Not long after the sd. Henry Ashton came into o<sup>r</sup> house & sat down, upon which my Mother sent mee this Deponent towards the sd. Town to looke after Cattle and if I could see sd. m<sup>r</sup> Gibbs to tell him that the man hee enquired after was at o<sup>r</sup> house soe finding the Sd. Gibbs I told him m<sup>r</sup> Ashton was at o<sup>r</sup> house then wee went together to Henry Smiths who directed him to m<sup>r</sup> Nath<sup>a</sup> Paine the Constable, who upon m<sup>r</sup> Gibbs complaint made mee this Deponent his Deputy & gaue mee his Staffe from thence I this Deponant went with sd. Gibbs home to my Father Woodcocks house & m<sup>r</sup> Gibbs goeing in before mee spake to sd Ashton who was in Cap<sup>t</sup> Willets Company & immediately m<sup>r</sup> Gibbs saide to mee this is the man doe yo<sup>r</sup> Office, I require you to apprehend him: Whereupon I this Deponent as the Constables Deputy went & clapped him sd Ashton on the Shoulder & saide I apprehend you in his Maj<sup>tyes</sup> Name you are my prisoner, soe after some words the sd. Aston asked by what power I did this & Cap<sup>t</sup> Willet also asked who made mee a Constable; m<sup>r</sup> Gibbs answered that the Constables staffe was sufficient warrant; soe Cap<sup>t</sup> Willet promised to bee his bayle & to see him forth comming the next morning at which time there was Cap<sup>t</sup> Willet & his Sonn Hezekiah, Roger Prosser & Tho: Roggerson; the next morning after Cap<sup>t</sup> Willet and his Company were gone I this Deponent having pressed a Mare for him sd. Ashton to ride on, I asked him to goe & commanded him in his Maj<sup>tyes</sup> Name to goe, but hee refused, soe wee used noe violence towards him at that time, but m<sup>r</sup> Gibbs sent away to Town & the messenger (being my brother Iohn Woodcock) comming home again saide that m<sup>r</sup> Brown the Magistrate was not at home (at which time hee brought with him a deputation from the s<sup>d</sup> Constable under his hand) which before was but before Witness. Then in the Evening m<sup>r</sup> Gibbs bid mee this Deponent command the sd. Ashton again to goe, who still refused, but saide if wee would command him to goe before any Magistrate within the sd. Colony as hee was o<sup>r</sup> prisoner hee would goe quietly with us but sd. Gibbs told him sd. Ashton if hee would bee unruly hee should bee bound; Notwithstanding the sd. Ashton resisted & refused to bee carried back into the bay pattent but began to strike & kick one & then another; then I this Deponent by sd Gibbs his order (who promised to beare mee harmless) did command the Standers by to binde him the sd. Ashton soe m<sup>r</sup> Gibbs & Nathaniell Chickering with indians & others with my selfe laide hold on him s<sup>d</sup> Ashton & bound him hand & foote & laide him upon a horse to carry him out of o<sup>r</sup> Colony but hee would not lye across the horse neither would

hee goe but wee carried him in o<sup>r</sup> Armes a good way of the house and then sent back for a chaire & set him in that & with a string about his middle bound him to the back of s<sup>d</sup> chaire & soe carried him & set him beyond the Line neere the heap of Stones, then Looking about & thinking I had done my Office being a Little within the bay Line; m<sup>r</sup> Gibbs commanded mee this Deponent to Assist him, for now hee is my prisoner hee being Marshalls Deputy then Nathaniell Chickering went to strike fire and m<sup>r</sup> Gibbs to gather fuell to kindle it, it being about an hour in the night & m<sup>r</sup> Ashton being still bound in the s<sup>d</sup> Chayre desired m<sup>r</sup> Gibbs to untie his hands because the straps hurt him, telling m<sup>r</sup> Gibbs hee need not fear his budging from him, soe m<sup>r</sup> Gibbs unbound his hands & soon after hee started up & whether hee cut the string about his middle that bound him to the back of the chaire I this Deponent know not, but hee sd. Ashton went into Plimouth Pattent again & saide my Deputation was out & that wee had nothing to doe with him with many words to that purpose & soe went along the road toward o<sup>r</sup> house and then m<sup>r</sup> Gibbs called to mee this Deponent to apprehend him sd. Ashton again telling mee I had the same power haueing the Constables staffe & as we went towards the house m<sup>r</sup> Gibbs drew the rapier hee had taken from sd. Ashton who came towards him and bid him stand off upon his perill soe wee all came back to my Fathers house & when I came in I called witness to take notice that sd. Ashton was my prisoner, soe when the sd. Ashton went to his Chamber wee shut him in & m<sup>r</sup> Gibbs sat up that night: The next morning I this Deponent went up to m<sup>r</sup> Ashton and desired him to rise that wee might bee gone, who answered hee would rise when hee saw his time, mean while by m<sup>r</sup> Gibbs his Order wee had provided a Cart to carry him sd. Ashton in & soon after he came down this deponent in his Maj<sup>ties</sup> Name required him to goe who refused with many high words & tooke hold of a pint pot & a cup that was upon the table and bid us come upon o<sup>r</sup> perill, soe m<sup>r</sup> Gibbs & my selfe & Na: Chickering & Iohn Woodcock laide hold on him sd. Ashton and laide him on the Table & bound him again hand & foote & laide him in the Cart Roger Prosser being there and soe wee draue the Cart out of the Colony with the sd. Ashton in it, then m<sup>r</sup> Gibbs commanded my brother Iohn in his Ma<sup>ties</sup> Name to driue the Cart along & hee would beare him out in it; & after hee sd. Ashton had rode bound in the Cart about a mile the sd. Ashton desired us to let him ride upon a horse & hee would bee quiet & not offer any abuse, soe hee gaue mee this Deponent his ring as a pledge thereof & soe I unbound his Leggs & the strings that pinioned his armes were slack & soe hee came out of the Cart & rode upon the beast I this Deponent had pressed for him till hee came to the Constable of Rentham, but whiles m<sup>r</sup> Gibbs went back to get a dram sd. Ashton asked mee this Deponent what hee should giue mee to bee his pilot to the other road for hee had a minde to meet with m<sup>r</sup> Saffin, to which I answered I thought as m<sup>r</sup> Gibbs told mee that I had power by virtue of the hue and cry to deliver him sd. Ashton to the nearest Constable and when wee were come to Rendham m<sup>r</sup> Gibbs gaue the sd. Constable the sd. hue and cry, which hee had all this time in his custody & at sd. Constables house hee then gaue mee a Coppie thereof & the sd. Constable tooke the Originall & all this time wee were kept in the darke concerning the hue & cry m<sup>r</sup> Paine since told mee & I thought it had been legall: And farther I this Deponent doe testify that it was for the value of One hundred pounds that sd. Ashton made an Escape for, as sd. m<sup>r</sup> Gibbs told mee: And farther this Deponent saith that when sd. Ashton was bindeing on the table hee asked by what power wee did soe use him & this De-

ponents Mother Sarah Woodcock read the deputation soe far as to giue m<sup>r</sup> Ashton to understand I had a power from the Constable but did not read it throughout & for all my paines in & about the pu<sup>r</sup>misses m<sup>r</sup> Gibbs gaue mee this Deponent eight shillings in mony and further saith not. Taken upon Oath before mee Iames Brown Assistant the tenth day of Novemb<sup>r</sup> 73.

Apparently most of the Woodcock family, with several neighbors, joined this triumphal procession into Boston headed by Benjamin Gibbs and the constable of Wrentham; for there are on record several of their depositions, made in Boston a few days later. Ashton was let out of jail the next day, November 7, on Saffin's filing a bond for his appearance at the next County Court (S. F. 1341.30), and Ashton promptly filed a cross suit against Gibbs for unlawful arrest, etc., which is the suit recorded in the entry to which these notes have been appended. Gibbs appealed from the judgment on behalf of the plaintiff; and at the same time Bonner appealed from the judgment against him on the same day (S. F. 1341.17):

John Bonner his Reasons of Appeal from the Judgment of a County Court at Boston held January the 27<sup>th</sup> 1673. in an Action of Review against Henry Ashton defendant.

Whereas the said Ashton in the beginning of his false pretences of great damages when he commenced this Action formerly did raise through subtilty an evill and false report vpon the sd Bonner to make him out of favour with his judges & himself in Credit that w<sup>t</sup> the s<sup>d</sup> Ashton did say or pretend might goe for good proof as it seemes it did with the juries (as J conceive) in which they have grosly erred and gon contrary to Law & Evidence as J conceive. viz as in the sd Ashtons first proces at July Court 1672 in Boston he sues y<sup>e</sup> sd Bonner [*torn*] Ashton & his goods & servants to Virginia according to Bills of loading [which] he had fulfilled agrejed with the sd Bonner before he sued to take all his goods & servants here in Boston & had received them to his content for well conditioned according to Bills of loading & would choose to stay here & refused to goe to Virginia & vpon the aforsd Agreement the sd Bonner had allowed y<sup>e</sup> sd Ashton eleven pounds in money besides abatements in freight in Consideration of all los & Dammages disappoyntments or others that y<sup>e</sup> sd Ashton had or might pretend ever hereafter all which sd Agreements & performance on Bonners parte appeares fully by the Evidences of George Peirson Thomas Peck John Sunderland & Jarvis Ballard & a paper vnder their hands of parte of the Essentiall matter of the Agreement that y<sup>e</sup> aforsd Depositions proves effectually the wholl Agreement with the Conditions Considerations & Circumstances thereof, & shall the paper vnder their hands be taken for all the Agreement as the juries did (as J conceive) wheras the sd Peirson & Peck were at the makeing of all the wholl Agreement & Peirson made y<sup>e</sup> written paper as parte of the sd Agreement at the sd time & is a witnes to it & noe Allteration was of the wholl Agreement in words or any intermission of time; but only the written paper had not all the words of the Agreement in it by reason the sd. Ashton & Bonner did not desire any writeing to be made at all being all things was to be done & performed between them forthwith & were careles not valueing any thing at all to be written, but the sd



Peirson would doe it & wrot only the heades of the matter & is it law or reason that the minor parte the writeing shall [*torn*] before the evidences which are the major or full [*torn*]ned by Ashton long afterwards to John sunderland, as by his Evidence. And is it not Reason & Law with high Equity for a jury to take all the Evidences according to their oathes that is presented to them & consider them alltogether for y<sup>e</sup> proof of y<sup>e</sup> matter & for the finding out the true merrit of the Case in what was don according to the true intent & meaning therof. & not to run vpon Criticks or Notions y<sup>t</sup> one may start to wrong or deceive a man of his iust right as for Example suppose a man should buy a horse with Bridle & saddle of another man for three or foure pounds & pay for all presently before severall witnesses & the buyer leaves the horse bridle & saddle in the sellers hand vntill he send for them & only take a noate or writeing vnder hand before the sd witnesses that the man is to deliver y<sup>e</sup> horse when the sd buyer sends for him & dos not mention y<sup>e</sup> bridle & saddle in the writeing. what shall the seller insist vpon y<sup>e</sup> writeing or noate & say this agreement was only for the horse & soe keep the Bridle & saddle which may be more worth then the horse & plead his writeing only for to be the wholl Agreement for the horse notwithstanding severall witnesses come in & wites that he bought & was to [*torn*] y<sup>e</sup> bridle & saddle also is this reason Law or Equity, even soe is [*torn*] Case which J leave to consideration of my judges as a reason of [my] Appeal.

2<sup>d</sup>. Reason of my appeal is for that the jury brought i[n] thei[r] verdict confirmation of a former verdict of seventy pounds money Dammages [and] Costs of Court against the now Plaintiff to which he sayeth that [the] jury herein have erred & gon contrary to Law & Evidence & plain Reason (as J conceive) & that for these Reasons first y<sup>e</sup> sd Ashton [does] not in the least sue for or mention any damage or summe in all [hi]s Attachment & how could any jury be soe blinde or ignorant to give damage where none is sued for nor proved. nor said w<sup>t</sup> summe [it] amounts vnto & they are to observe the Attachment & the Attach[ment] is only for not carrying him Goods & servants to Virginia & deliver them there & not one word of A penny damage as the verdict is for; sustained by his not soe doing; or for any other thing pretended at all in the Attachment. & as to what is in his Attachment sued for his written agreement & all the Evidences together or apart doe fully prove that he was to have & had his goods & servants delivered her[e] & it was impossible that the now plaintiff Bonner could be justly s[ue]d to deliver his goods in Virginia & here too, which is the summe & substance of his Attachment of w<sup>t</sup> he sued Bonner for when he had as bef[ore] agreed to take all here & had eleven pounds & other abatement[s] all[ow]ed in full to the sd Ashtons content & satisfaction as appeares [*torn*] specified. & will or ought he now to have twice satisfaction o[*torn*] for one & the same th[ing] as the juries hithertoo have given him [&] had the sd Ashton de[liver]ed vp the Bills [of load]ing [accord- ing] to Agreement he could not have had any such [*torn*]

3<sup>d</sup> Reason of Appeal is in y<sup>t</sup> y<sup>e</sup> sd Ashton dos not at all prove any damage sust[ained] to the value of the eleven pounds J did allow him nor halfe [as] much in all his Accoumpt by gues pretended soe that he neit[her] sues for damage nor legally proves any Damage & y<sup>e</sup> the [jurie] by gues (as J conceive) gives him seventy pounds & Costs of Court as J shall speake to it. The first post in his Accoumpt by gues is for seven servants ran away from aboard at sixty pounds of y<sup>e</sup> seve[nty] w<sup>ch</sup> the jury gave which is a false post charged, for that J never tooke aboard as servants but as passengers if they went & J tooke noe charge



to keep them aboard nor would give any receipt vp[on] any such Account but did declare to the sd Ashton J would not by reason the vessell lay mostly aground in all places & J could not secure them from going ashore vntill J came to sea & y<sup>e</sup> sd Ashton did beate those servants of his aboard & ashoare inhumanely & made them run away The next post is for two men for Cookes when as all my seamen had little els to doe lying in harbour most parte of the time & I had Cooks of my owne men & never desired any of his for Cook nor agreed nor promised him a penny & w<sup>t</sup> little they did was of their owne accord & Ashton proves nothing otherwise: And y<sup>e</sup> next post is for his charge for Exp[en]ces ashore<sup>00</sup>: when as he might have stayed on board & saved it although he never payed a penny for his passage or dyet aboard to this day. & is it usuall for Masters of vessells to pay a passengers expences ashore but this demand is like y<sup>e</sup> rest And to y<sup>e</sup> damage of his cloath & fustion 30<sup>s</sup> if any such was he had packed it in a sugar butt y<sup>t</sup> did it, & not the vessell. & for cheese all men know will damage of it self at sea. And for the mault 10<sup>l</sup> its very false & none but his man Jn Ireland swears y<sup>t</sup> it seemed to be damnyfied not y<sup>t</sup> it was soe, & that sorry fellow was a meere thief & stool the Cargoes goods & blasphemously forswore it & afterwards owned it when found with him & this Miserable wretch is all his Evidence in all his wholl Account, but if he had any damage why did he not let it be seen & gon in a legall way as vsuall to have m[e] apprized it & let me know of it which he never did by reason he had not any damage by y<sup>e</sup> vessell or seamen he well knew. And to his last post to ballance he charges 100<sup>l</sup> for not carrying him for Virginia a summe even guessed neither more nor less like a very knowing or foreseeing merchant y<sup>t</sup> knew his market before he came there. This last post is as vnreasonable as the first of his servants y<sup>t</sup> had eaten vp the ships provision many months & then ran away by his abusing of them & he never allowed a penny for it, & for all this last post he had satisfaction here; for his not going to Virginia [torn] before appear[ing] yet makes this post to have [torn] known y<sup>t</sup> he got [torn]ved rather 100<sup>l</sup> by not going to Virginia as he owned in saying he was glad y<sup>t</sup> he did not goe to Virginia as per y<sup>e</sup> deposition of Jarvis Ballard appears for he sould his goods at a very great rate here & had Tobacco here cheaper then would have cost with the Charges in Virginia. & most men lost very much y<sup>t</sup> yeare by going to Virginia in trading there. & yet this vnreasonable man makes this false Account & vnreasonable demaunds & proves not nor sues for in the Attachment of one penny damage of y<sup>e</sup> juries seventy pounds wh[ic]h they are by their oath to have full & legall proof for all that they doe & they have not one evidence at all to the Account in Law but a forsworn thief to a seeming thing & not soe much as Ashtons own oath to one perticular that he esteemed true which is remarkable, soe that J have fully demonstrated & proved that the iury had neither Law nor Evidence for [what] they did but have erred as is not vsuall in a matter soe cleare as if their oath did binde them to goe by vncertainty in place of Law & evidence (as J conceive) . . .

The rest of the document is mutilated.

Gibbs's Reasons of Appeal can be partially reconstructed from the following Answer to them (S. F. 1341.21):

Richard Way Attorney Appointed by the Last Hono'd County Courtt held Att Boston His Answ<sup>r</sup> To Benjamin Gibbs His Resons of Appeale:

Jmp<sup>rs</sup>: To his First p<sup>r</sup>tended Reson Js Only Grounded vpon Reflection Against the Hono<sup>d</sup> County Court and therefore Contrary to Law title Appeales w<sup>ch</sup> Saith thatt y<sup>e</sup> Appellant shall Enter his Resons Without Reflections vpon y<sup>e</sup> Court or party butt being Contrary to Law y<sup>e</sup> Def<sup>t</sup> Hopes this Hono<sup>d</sup> Court Will see Cause and Ground sufficient to Cast his Resons (or More Like Clamerous Words) out of y<sup>e</sup> Courtt: But the Last Hono<sup>d</sup> Court Went both by Law and Evidence as Will Planely Appeare Jn y<sup>e</sup> Tryall of the Case:

2 To his ad: Wee Deny his Assertion For there Was sufficient Evidence (and still is) sufficiently to proue his Barbarous vnhumaine and vnchristian Like fact Both Jn this Jurisdiction and Also outt of this Jurisdiction To y<sup>e</sup> p<sup>r</sup>son Namely M<sup>r</sup> Ashton: And Also the p<sup>r</sup>son that had the Constables staffe in Plimoth Collony was vnd<sup>r</sup> Couert Bame in his Fathers tuition and therefore not Capable of Taking any office vpon him

3. To his: 3<sup>d</sup> Wherein he p<sup>r</sup>tends that y<sup>e</sup> p<sup>r</sup>son Arrested was in the possession of y<sup>e</sup> offic<sup>r</sup>, Wee Own he was once p<sup>r</sup>tendedly in y<sup>e</sup> possession of y<sup>e</sup> pl<sup>t</sup>: And had his Liberty from y<sup>e</sup> offic<sup>r</sup> to goe About his Buisness and Jllegally p<sup>r</sup>sued by y<sup>e</sup> p<sup>lt</sup> and to his Reflect vpon y<sup>e</sup> Last Hono<sup>d</sup> Court J shall Leauē to this Hon<sup>d</sup> Courts Consideration & Determination therein

4: To his: 4: Jf an offic<sup>r</sup> Doe neglect his Duty Jn his office that Doth not Justify any officer in y<sup>e</sup> Indeauoring to Doe his Duty Jn an Jllegal way:

5: To his: 5: There Js nothing of Reson in it neither Js it att all parralell to this Case:

6: To his 6: whereas he saith that Jf any Damage be Done y<sup>e</sup> Marshall must suffer being y<sup>e</sup> only Gaine<sup>r</sup>, To Answ<sup>r</sup> though y<sup>e</sup> p<sup>lt</sup> was Deputy Marshall here Jn Boston yet he p<sup>r</sup>sued not m<sup>r</sup> Aston by vertue of y<sup>t</sup> Attach<sup>t</sup> but by vertue of A Warrant From y<sup>e</sup> Worshipfull m<sup>r</sup> Bradstreet and whom soeu<sup>r</sup> he Jmplied and Acted in y<sup>e</sup> Buisness After his Going outt of Boston he y<sup>e</sup> p<sup>lt</sup> Jngaged to bare them Harmeless in what they Did; and Jn y<sup>e</sup> prosecution of y<sup>t</sup> Warrant he was neith<sup>r</sup> Jmpowred as marshalls Deputy no<sup>r</sup> Constables Deputy.

7. To y<sup>e</sup> 7<sup>th</sup> & Last JH is only a Reflection vpon y<sup>e</sup> Hono<sup>d</sup> County Court whom J highly Hon<sup>r</sup> and Respec<sup>t</sup> and Judg they Did nothing Butt what was Just And Legall All which J shall Leauē To this Hono<sup>d</sup> Courtt and Jury to Determine:

The appeal was heard at the March session 1673/74 before the Court of Assistants, which confirmed the former judgment in favor of Ashton (Records of Court of Assistants, i. 3). And thus, some three years and a half subsequent to his sailing from Liverpool on the Recovery, Henry Ashton was allowed to depart in peace for Virginia.]

#### MOSELY ag<sup>t</sup> STANES

Richard Mosely as Administrato<sup>r</sup> unto the Estate sometime the Estate of Nicholas Gouldensburgh deceased plaint. ags<sup>t</sup> Ioice Stanes sole Executrix to the last Will & Testam<sup>t</sup> of Rich<sup>d</sup> Stanes sometime of Boston deceased Defend<sup>t</sup> in an accion of the case for the s<sup>d</sup> Stanes her refusing to deliver unto the s<sup>d</sup> Mosely a just & true acco<sup>t</sup> with

the produce thereof of what goods mony or other specie Shee hath in her hands belonging to the aboues<sup>d</sup> Estate or that was at any time left by the s<sup>d</sup> Gouldensburgh in the custody of her late husband Rich<sup>d</sup> Stanes or betrusted with him or the s<sup>d</sup> Ioice Stanes to dispose thereof for the s<sup>d</sup> Gouldensburghs acco<sup>t</sup> & for her refusing to make just & Legall Satisfaction for the same, although [ 184 ] Lawfully demanded according to Attachm<sup>t</sup> Dat Ianuary 2<sup>d</sup> 1673. . . . The Iury . . . founde for the plaint. that the Defend<sup>t</sup> give a just & true Account of all the goods & monys delivered to her or Left by the s<sup>d</sup> Gouldensburgh in the custody of her late husband Stanes & deliver the same with the produce thereof to the plaint. within the space of twelve dayes next Ensuing or to pay the s<sup>d</sup> Mosely Forty pounds Sterling in currant New-England mony at the time afores<sup>d</sup> & costs of Court.

SHARP ag<sup>t</sup> RIDER &<sup>a</sup>

Iohn Sharp, plaint against Iohn Rider & William Crutchlow or either of them as Administrato<sup>rs</sup> to the Estate of Thomas Badgard deceased Defend<sup>ts</sup> in an action of the case for the nonpaiment of a debt of four hundred eighty three gilders ten Stivers Wampum value, which is thirteen pounds nine shillings & four pence mony or thereabouts, with costs, which is fourteen shillings & eight pence more due to the s<sup>d</sup> Iohn Sharp by a judgm<sup>t</sup> passed ags<sup>t</sup> the s<sup>d</sup> Rider & Crutchlow at a Court held the third day of Iune 1673. in New Yorke; which debt is due in part by a specialty paialle to William Phillips bearing date the twenty fourth day of Octob<sup>r</sup> 1672 & assigned to s<sup>d</sup> Sharp & the other part by ballance of Account stated Decemb<sup>r</sup> the 30<sup>th</sup> 1672 both which specialty & account aforesaide was accepted to pay & underwritten by s<sup>d</sup> Rider & Crutchlow according to contents & all other due damages according to Attachm<sup>t</sup> Dat 7<sup>th</sup> of Ianuary 1673 . . . the Iury . . . founde for the plaint. four hundred eighty three gilders ten Stivers or the just & true value thereof which is twelve pounds one shilling nine pence in currant pay & costs of Courts. The Defend<sup>t</sup> appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Iohn Rider as principall in twenty five pounds & W<sup>m</sup> Kent & Iohn Paine as Sureties in twelve pounds ten Shillings apeice acknowledged themselves respectiuey bound to . . . prosecute his Appeal . . .



[ The Reasons of Appeal cannot be found; but there is an interesting story of John Sharpe's adventures in his Answer to the Reasons of Appeal (S. F. 1267.2):

To the honoured Court of Assistance, and the worthy Gentlemen of the Jury, John Sharpe in all humillity Sheweth his answer to the reasons of Appeale of M<sup>r</sup> John Rider from the verdict of the Jury serueng y<sup>e</sup> Last County Court, and Judgment passed Thereupon.

Imp<sup>rs</sup>, Whereas the p<sup>lt</sup> alleageth in his first reason that the testimony of M<sup>r</sup> Mathias Nicolls cannot stand good in Law. for that hee is a party, this def<sup>t</sup> answereth; that Iohn Ryder and William Cruchlow, only signed as Administrators to y<sup>e</sup> bill of 200 guilders, without once mentioning the name of said Nicolls, and as this def<sup>t</sup> allwayes understood and other Creditors, to said estate was informed, said Cap<sup>t</sup> Nicolls was afterward impowred or added to said Rider and Cruchlow, by the honno<sup>rd</sup> Gouerno<sup>r</sup> and his Councell, as Ouerseer, Controler, or Suprouizer, ouer said Administrators, to the end, That Creditors, or next heyres to said Badgards Estate, (being looked upon considerable,) might not by any sinister dealings be wronged as by Cap<sup>t</sup> Nicolls testimony will Euidently appeare, who if personally before this hono<sup>rd</sup> Court did appeare, the Plantiffe would not shew his face before yo<sup>r</sup> hon<sup>rs</sup> in this accion, on his owne defence, to proue the same, said Cap<sup>t</sup> Nicolls signed or underwritt not his approbation of said bill of 200. Guilders, untill 3 moneths after w<sup>ch</sup> was payable as in forme of bill of Exchange, in tenn dayes after Reception, w<sup>ch</sup> is neare 18 monthes since, by w<sup>ch</sup> dealing, this def<sup>t</sup> is greatly damnified. the p<sup>lt</sup> with y<sup>e</sup> other administrator Cruchlow then engaging without any exception or Prouisoe to pay y<sup>e</sup> said two hundred guilders in ten dayes after y<sup>e</sup> sd accepting, neither Can this P<sup>lt</sup> bee soe great a Creditor to the intestates estate, as hee pretends for that hee the def<sup>t</sup> hath seene y<sup>e</sup> intestate in his life tyme, pay the said Ryder more Beauers, w<sup>ch</sup> was weighed in M<sup>r</sup> Darualls shopp, then this def<sup>t</sup> received in three yeares for neare twenty lodgers, (fast & loose) w<sup>ch</sup> Beauers are neuer owned by the P<sup>lt</sup>, and further M<sup>r</sup> Delauall and M<sup>r</sup> Daruall sent in, and paid for, all, or most part of the wyne beere and other considerable matters, relating to funerall expences as M<sup>r</sup> Derualls acco<sup>nt</sup> will euidence, neither did y<sup>e</sup> p<sup>lt</sup> at the making up the acco<sup>nts</sup> of Badgards. by or at a Publique meeting, published, for y<sup>t</sup> purpose Euer pretend, or lay claime to any thing of said estate, when all the Creditors made their claymes. as appeares by Cap<sup>t</sup> Nicolls Testimony, (but since) the plt thinkes to defraud Creditors, and heyres, by and under, the pretence and notion, of New Yorke being taken, (and therewith all the estate of Cap<sup>t</sup> Badgard) which is plainly euenced to the contrary of by Andrew Jansons testimony, which the p<sup>lt</sup> by his fallacious retorique, endeauours to make Voyd, as alsoe M<sup>r</sup> Mathias Nicols testimony who hath bine tenn yeares Principle Secretary of New Yorke, and soe Long a Magistrate, or Minister of Justice, of the first quallitty, (Vizt, of Coram, & Privy Councell) and of unspotted and unblemished reputation.

2dly. And wheras the P<sup>lt</sup> alleageth Andrew Janson was a sworne subject to the Prince of Orange &c. its a very great fallacye and untruth, hee neuer hauing any oath, either proposed, or administred to him, but integretly owned in his testimony, that was the Second tyme, hee was unfortunately taken by the Duch, the first tyme of which hee was carryed Prizoner to Amsterdam, where by his hard usage, hee would come noe more there if hee could avoyd it, to w<sup>ch</sup> end being



taken at Virginia now, or latly A second tyme, understanding the Duch fleete were bound to his Maties territories hee promised to himselfe, noe greater opportunity to make his escape, then to take up Armes under the duch Command, w<sup>ch</sup> he did, and proued extreemly Ciuill to this defend<sup>t</sup>, in his close imprisonment, as well as to diuers others of our English Nation, who were then, and there, under restraint, and as soone as oportunity presented the said person fledd from his Duch Masters, and hauing bine in this towne and Endeauored to make discouery of some Susptions of Duch persons (for want of Subsistance) is gone to sea in a Ship, or vessell bellonging to this towne, but had the said Andrew Janson sworne alleagiance to the Duch, (as hee did never) his said Oath to the duch had bine of noe validity, it being of noe force longer, then hee abode under their Gouvernment, as is the contents of all Oathes administred to the English since the Duch reducement, wherefore M<sup>r</sup> Ryders bare allegation, of said Andrews Oath as a Subject to holland, w<sup>ch</sup> was taken in Boston, the deft hopeth will not make it Voyd, by reason (when administred) in Boston A subject of England, as is proved,

3<sup>ly</sup> And whereas. the Pl<sup>t</sup> says the deft produced but one bill, and that was but for Two hundred Guilders. y<sup>e</sup> Def<sup>t</sup> owneth the same, but hee produced an account of Two hundred Eighty three Guilders ten Styvers, more and besides the first bill, which Account was accepted, allowed, and approued off, by the said Administrat<sup>rs</sup> and a Kind of a breife bill, indorsed on the back side thereof, w<sup>ch</sup> was with the former by the hand of the def<sup>t</sup> in Presents of diuers persons deliuered into Court at New Yorke, as alsoe was in the hands of the Jury and the whole owned by this plaintiff in the court of the County Otherwise the said Jury were very rash to bring in a Verdict for 483. guilders tenn styvers: upon a bare bill (: & that not Obligatory) for, or by y<sup>e</sup> Simple, or Only bill of Two hundred Guilders; as the Pl<sup>t</sup> alleageth, which Account is said to bee lost, but how, or by what meanes, this def<sup>t</sup> Knoweth not, (which if really lost in Court or by Jury,) hee hopeth hee shall not loose his right, by, or for Such an unfortunate defect, the Judgment of New Yorke Court manifesting, that the Pl<sup>t</sup> confessed the whole debt of 483. guilders ten styvers, and promised payment of the same, Although taking advantage of the loosing said Account; Falsely asserting hee never underwritt or signed for more then the bill of 200 Guilders, as beforesaid, w<sup>ch</sup> hath bine seene and read as this def<sup>t</sup> conceives by some of the former hono<sup>ble</sup> Bench as well as the Jury, and many others;

4<sup>ly</sup> As to the Pl<sup>ts</sup> allegation of my taking out the Coppy of the Judgment after New Yorke was taken, it is a Very great falcehood and untruth, for y<sup>t</sup> I shall bee allwayes ready to make Oath, that I had it in my Posession, the very next day after the Court rise, w<sup>ch</sup> was on the 4 or 5<sup>th</sup> June, and New Yorke not taken untill the 30<sup>th</sup> July. Neither is Bayard y<sup>e</sup> Duch Secretary, soe much my good Freind, as the Pl<sup>t</sup> alleages. hee forceing mee at my banishment from Thence, to leaue in his hands, Spetialtyes, bills and accounts, ammounting to 7000. Guilders, when as I was in his debt but 2500: Guilders. neither would Said Bayard giue mee a receipt for the same, which I durst not dispute with him for, fearing the welfare of my Poore wife and Children, under the frownes of soe powerfull an enemye, left behind, under their command. In my banishment and absence, (God knowes, litle tokens of great freindshipp)

5<sup>ly</sup> The Pl<sup>t</sup> desires your obseruacion how Cautious the Court of New Yorke was, in ordering Noe Execution to be issued forth, before next Court day, which was granted, at his importunate and solicitous motion, to the end, hee might haue

a litle tyme to make up Badgards accounts, w<sup>ch</sup> y<sup>e</sup> Court long debated on, and At length granted, but upon noe other Consideration, although the P<sup>lt</sup> is Pleased to make other euell constructions therof, vide Cap<sup>t</sup> Nicolls testimony as to Effects, I shall not trouble the hono<sup>d</sup> Court and Jury with more answer to that reason.

6:ly. As litle as may bee I shall answer to his 6<sup>th</sup> reason, there being litle or noe truth therein, and as litle to the merrit of our cause, by reason I haue proued hee hath not lost his estate, vide testimony of Andrew Janson but admitt it were soe, this bill and acco<sup>t</sup> for which, I sue, was due & ought to haue bine paid, long before the p<sup>lt</sup> could pretend his Estate was lost, or New Yorke taken; w<sup>ch</sup> I pray y<sup>e</sup> honno<sup>d</sup> Court and Jury to consider of by date

7<sup>ly</sup> And wheras the P<sup>lt</sup> alleageth in his 7<sup>th</sup> reason that the Judgment is bill and not bills, hee contradicts himselfe and makes him guilty of a manifest fallacye as by his 4<sup>th</sup> reason in 5 lyne will appeare, wherin there is by his owne penn owned, that the Judgment inserts bills, wherefore the P<sup>lt</sup> being depriued of all his reason, I shall not answer more to this, Neither as the deft humbly conceiueth is it materiall or requisite.

8. In breefe may it please this honour<sup>d</sup> Court and Gentlemen of the Jury, in answer the p<sup>lts</sup> 8<sup>th</sup> reason. the def<sup>t</sup> humbly replyeth that y<sup>e</sup> testimony of Capt Nicolls alone is sufficient to evade it, and make it of noe Validity

9<sup>ly</sup> & 10<sup>ly</sup> In answer to y<sup>e</sup> P<sup>lts</sup> said 2 reasons. in the first of which, hee charging the Deft, with a Duch Protection, a more notorious untruth was neuer written or Spoken, the defent being commanded first to serue in a publick affayre in which discharging his trust faithfully, for his imployer the deputy gouerno<sup>r</sup> and country, without Feare of the Duch menacings and threatenings, tended more to the Defts Ruine then Any other person in New Yorke, Except M<sup>r</sup> Delauals family as will appeare, by their unkind dealings with him, Vizt, first they ceased and confiscated all his bedding to Number 11 Pueter, Brasse, Iron, and all or most part of his Moueables & debts to Vallue £750 not leauing him a pot to boyle his childrens victualls in, nor thing to drinke in, Neither had his wife any, untill hee, after his ariuell hither, bought one of M<sup>r</sup> Shrimpton cost 5.<sup>s</sup> 6.<sup>d</sup> & sent it by Cap<sup>t</sup> Dauenport: presently after, the Duch sent a Guard of Musqueteirs, put y<sup>e</sup> Deft prizoner on the maine Guard where hee continued & was detayned 5 nights & dayes: with his lodging on y<sup>e</sup> boards, among some of their theiues and rougues, in Irons: and after sent home Soe lowsey, and Full of Vermine, that hee durst not bed with his wife, Vntill such tyme shee had gone to the neighbours and borrowed him a Shirt, hee hauing lost 23. and not one left him in the world. neither For himsefe wife and Children: then they made an Edict that I must bee banished in 6 weekes, which tyme they gaue mee to receiue what debts I Could; and pay what I Owed to their nation, (w<sup>ch</sup> amounted to £:240:) that I payd them. but notwithstanding my wife put in seuerall Petitions to Obteyne longer tyme to gett my debts or some part of them, for her & her childrens subsistance in my banishment, yet it would by noe means bee granted, but oblidged & forced mee away at y<sup>e</sup> Very 6 weekes end, and since my Departure, shee hath giuen in 7 Petitions more for my admission But for 3 or 4 moneths liberty to bee there, to settle my affayres gett in, and collect my debts, and transporting my family from thence Which hath bine noe more prevalent. then the former, but an absolute denyall therof, In consideration of w<sup>ch</sup> uncomfortable life hee thereby this 6 moneths hath liued, depriued of his wife and childrens sosciety, and litle or nothing

heere to maintaine him, but y<sup>e</sup> Charitable fauours of some good Christians his acquaintance therupon hee latly tooke up a resolution with that Caution (if hee could obteyne the honnor<sup>d</sup> Gouernors pass) about the tenth of Aprill hee would goe as farr as Rye; the westernmost bounds of Hartford Collony, there being ariued, send for his wife, with some bookes, and papers, hee hath of debts in the Indies, and immediately after to take shipping For Barbadoes, (if an Army doe not by that tyme goe from hence thitherward), for which motion this defent hath wayted 5 moneths at a great Expence and charge, this is the trew account of my sufferings and designes; although y<sup>e</sup> P<sup>lt</sup> studyes with his Rabshaka raylings re-vileings, & scurruluous defamations, not only to defraud mee of my Just debt, but take away my life or good name, if posible The def<sup>t</sup> therfore humbly prayeth pardon for his prolixity, fearing to trouble your honno<sup>rs</sup> with a larger reply, to the p<sup>lts</sup> ten reasons: and humbly referreth the Justice of his cause to your honno<sup>rs</sup> and the Jurys prudent manngement, according to Law. Equity. and good Conscience with a due consideration, it hath passed 2 Courts & One Jurye and One Verdict and 2 Judgments had and obteyned therupon allready &c

Your honno<sup>rs</sup> humbly devoted, and poore Subject, & faithfull servant,

John Sharpe

The Court of Assistants found for the plaintiff in error, and reversed the former judgment and costs. Records of the Court of Assistants, i. 7.]

#### BONNER ag<sup>t</sup> ASHTON

John Bonner or his Attourny or Assigne plaint. ags<sup>t</sup> Henry Ashton Defend<sup>t</sup> in an accion of reveiw [ 185 ] of an accion tried & judgm<sup>t</sup> granted thereupon at a County Court held in Boston the 30<sup>th</sup> day of Iuly 1672 against the s<sup>d</sup> Bonner the aboues<sup>d</sup> Ashton being plain-tiffe & the s<sup>d</sup> Bonner Defend<sup>t</sup> & other due damages according to Attachm<sup>t</sup> Dat the first day of Novemb<sup>r</sup> 1673. . . . The Jury . . . founde for the Defend<sup>t</sup> confirmacion of the judgment of the former Court & costs of Court. The plaint. appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Iohn Bonner as principall in ten pounds & Benj<sup>a</sup> Gibbs & Stephen Butler as Sureties in five pounds apeice acknowledged themselves respectively bound to . . . prosecute his appeal . . .

[See the first case this session, above, p. 347, and Index.]

#### BONNER ag<sup>t</sup> ASHTON

Iohn Bonner or his Attourny or Assigne plaint. ags<sup>t</sup> Henry Ashton Defend<sup>t</sup> in an accion of the case for not performing an Agreem<sup>t</sup> made between the s<sup>d</sup> Bonner & the s<sup>d</sup> Ashton, relating to a voiadge in the Catch Recovery from Liverpool & intended for virginia but here



ended by an agreem<sup>t</sup> made as aboues<sup>d</sup> on or about the 28 day of May in the yeare 1672 which s<sup>d</sup> Ashton hath not performed on his part to the great damage of the s<sup>d</sup> Bonner & other due damages according to Attachm<sup>t</sup> Dat the first day of Novemb<sup>r</sup> 1673. . . . The Jury . . . founde for the plaint. Forty six pounds in mony for debt & damage & costs of Court.

[ See the first case this session, above, p. 347, and Index.]

#### MELYN ag<sup>t</sup> DUDSON

Isaac Melyn plaint. ag<sup>t</sup> Cap<sup>t</sup> Ioseph Dudson pretended Master of the Ship Expectation Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat Ianuary 19<sup>th</sup> 1673. The Accion being called the Court having heard the allegacions both of plaintiffe Defend<sup>t</sup> & considering that the Generall Court haue established a Court of Admiralty: The Court Looks at this case to bee most proper for the cognizance of such a Court & therefore dismiss the accion from this Court & Order the plaint. his Entry mony again.

#### DARVALL ag<sup>t</sup> DUDSON

William Darvall plaint. ag<sup>t</sup> Ioseph Dudson pretended Master of the Ship Expectation Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat Ianuary 21<sup>th</sup> 1673. The Accion being called & the Court having heard the allegacions of plaint. Defend<sup>t</sup> & considering that the General Court have [ 186 ] Established a Court of Admiralty. The Court judge this case most proper for the cognizance of such a Court & therefore dismiss the accion from this Court & Order the plaint. his Entry mony again.

[ The facts in this interesting admiralty case are related in a lengthy petition of Isaac Melyen to the General Court (S. F. 162130.2):

To the Honorable Generall Court now assembled in Boston The Peticion of Jsaack Melyen humbly sheweth

That whereas yo<sup>r</sup> petition<sup>er</sup> is by force Vnjustly kept out of the Vse and posession of his shipp Called the Expectation, Meerely upon the false pretence of m<sup>r</sup> Ioseph Dudson & his Complices Yo<sup>r</sup> petition<sup>er</sup> hauing a Iust Right as Sole owner of said shipp, and for as much as this honored Court at last Session had some Debate Concerning the premises, and did not then fully Determine any thing or giue any decisiue Centence therein, But left the s<sup>d</sup> Dudson to his libertye to fitt the s<sup>d</sup> ship for England, as by Coppye of the Courts Record may appear a Coppye where of is heare annexed, the principall under the Secretaries hand is



redy to bee produced to Compare if Required by the Honor<sup>d</sup> Court, soe that the true Sence of the Courts Record is that said Dudson had his Libertye to fitt said ship, or not to fitt her, and when soe done hee is att his Libertye, whether hee will send her for England or nott, as I humbly Conceiue from the words of said Record, and the Record is all my rule to act by; from which Libertye I did Conel[ude] by necessary Consequence, I was left to my Libertye to proceed in Common Law for my Right and in persuance thereof I did intend to sue any that Should denye mee possession of my ship and in my goeing to obtaine possession I found not any person one Board s<sup>d</sup> shipp at all—Whereupon I did peaceably Enter the said ship, and tooke possession w<sup>th</sup> some freinds w<sup>th</sup> mee of her, and declared it unto them, which I humbly Conceiue is all according to the Common Law and Vsual practise of many in the like Case, and presedents may bee Cited; only one att present, in a Case Between the Execut<sup>rs</sup> of the late honor<sup>d</sup> Gou<sup>r</sup>-no<sup>r</sup> and m<sup>r</sup> Rich<sup>d</sup> Wharton attourney to young m<sup>r</sup> Bellingham Concerning a parcell of land aboute this towne, where possession was taken by both partyes of said land finding none uisible in possession, and further a Lock broke of the gate and all this was accounted Legall the Last Countye Court as I Conceiue<sup>1</sup>—But y<sup>e</sup> petition<sup>r</sup> for takeing possession as aboue of my ship, was by the misinformation and Stirring up the authoritye by my opposite partyes, Committed to prison, w<sup>th</sup> three more, and am w<sup>th</sup> them still prison<sup>rs</sup> und<sup>r</sup> one thousand pound Bond w<sup>th</sup> Securitye for my selfe, all which J Conceiue is hard measure, for a poore man that has Lost all, and a Stranger,

Now may it please this Hono<sup>rd</sup> Court to Consid<sup>r</sup> my Innocency in this matter, and that it may pleass y<sup>e</sup> Lord to Moue yo<sup>r</sup> Charitye to Conclude the prosedings of my opposite partyes haue byn much like it from the first Seizing and takeing of my ship from mee,

First the grounds of my takeing possession as aboue mentioned, was from the honorable Generall Courts Act, manifested by the Coppye of the Record, und<sup>r</sup> the Secretaries hand that both partyes was left to theyre Libertye, and soe to proceed in Common Law, which is open to all, and the true Right according to the first law in our Law Booke of Euery Subject to haue the benefit of—Nay further the King has put forth a proclamation or Declaration since the warr w<sup>th</sup> holland, that if any dutch man, or a subject of the states shall Come ouer into any of his majes<sup>ts</sup> Dominions, w<sup>th</sup> his goods or Estate, it shall bee accepted & protected and haue Equall priuiledge of the Laws, and benefit of safety and Reliefe, as his English Subjects, if they will owne themselues Subjects to his Majestye, Notwithstanding they had byn [*torn*] Enemies to his majestye while they liued in holland; And why my partyes should pretend mee an Enemy and an Alient, that haue my Deneziation to shew, and was borne at New hauen in this Country I Leauē to Consideration—And Secondly it was needless for mee to Sue for possession, when I might haue it peaceably w<sup>th</sup>out opposition, and without Breach of any Law, or Contempt of any Authority by any prohibition or Effectuell ord<sup>r</sup> in the Generall Courts Record as aboue; for had any thing byn determined in the aboues<sup>d</sup> Record, for the shipp to bee sent for England, Securitye giuen that the ship should bee there brought for tryall, and I Liberty to goe peaceably in her, I should not haue attempted to haue taken possession, or [done] anything to Contemme what the hono<sup>rd</sup> Court had done;—Now may it please

<sup>1</sup> See Hutchinson v. Blake, above, p. 271.

the Lord to moue in pittye the hearts of his honorable assembly to Consider a poore strangers Condition, who is almost freindless and monyless, that Since by prouidence, nothing is [*torn*]tically acted by this hono<sup>ble</sup> Court Vpon Record, That you will bee pleased to graunt yo<sup>r</sup> poore petition<sup>r</sup> this only fauoure, to haue a tryall heare, att Common Law or other tryall heare, as yo<sup>r</sup> hono<sup>rs</sup> shall Iudge fittest, and my Distressed Condition Nesesitates mee to presume, to present theise Reasons to yo<sup>r</sup> fauorable Considerations for a tryall heare; viz<sup>t</sup> — First, for that I haue something left mee, unbereued of att New York with my wife and Children, w<sup>ch</sup> J would remoue to some of theise Collonyes for safety which if I must goe for England, will bee Lost, and my family Exposed to misery and want — Secondly, heare is my ship & heare, I haue had peaceable and Legall possession of, and am Dispossessed againe, as to a personall possession, But I Conceiue Equally and Legally in Right of possession still, and here I make my Claime to it and am Redy to proue my Right to the ship Effectually — and there is most of the goods aboard of her belongs to the Inhabitants of this place, and the parties all heare to make good theire Right, which cannot possible be done soe well Else where — Besides there is uerry great hazard, of ship and goods, w<sup>ch</sup> none Iustly Concerned are willing to Runn — And if taken where shall the Case bee tried then, or any man Come by his Dammage of these parties who haue noe Loss by the Loss of o<sup>r</sup> Estates — Except the hono<sup>rd</sup> Court shall bind them to a tryall, if the ship and goods bee taken and the goods heare to bee let seene for men to proue theire Right in them, by Marks Speties, and otherwise, Else how shall it bee proued in England, when possible most will bee Embazled, or wrong Disposed of, as a Considerable part is already and will bee proued upon a tryall here I make noe doubt in the least and yo<sup>r</sup> petition<sup>r</sup> shall haue nothing but my owne ship if arriue in England and Recouered, to pay my dammage, And alsoe that some particuler port may be nominated to goe to, that the majo<sup>r</sup> part of the parties shall Consent to — Thus J humbly Conceiue good Securitie ought to be giuen, in Right Reason and Law to preuent all Dammages & Inconueniencies, that will fall upon the true interesters of goods and ship — And that a tyme bee sett for her sailing, Else yo<sup>r</sup> petition<sup>r</sup> may not bee able to subsist to waite theire tyme — I knowing all theire design is to doe all things to vex and distress yo<sup>r</sup> petition<sup>r</sup>, for to giue up his [*torn*] or sell it unto them for Little or nothing — My Third Reason for a tryall heare, being my due Right according to the cheife Law of our Magna Carta the first Law in the Booke, that noe mans person good name or Estate shall bee taken away, w<sup>th</sup>out some Express Law of the Generall Court warenting it, and suffittiently published, And here my Estate and good name is taken from mee, by the disposing mee of my ship in this harber, or otherwise before, and they haue Raised false reports to make mee odious in the Eies of my Judges & all people in a most notorious manner, which to Imytate is to be abhard of all men, But were it all as true as its false, that giues them not the more Right to my ship, nor mee the Less, for Euery man is to suffer in the matter hee is Conuicted of Justly, and not because a man [*m*]ay[*b*]e a Rouge or a theef, therefore any man may take his goods from him, or that hee may not haue a Just Case in another matter, But Such poore shifts as these are neuer used but where the Cause is uerry bad, and must bee made Seeme good w<sup>th</sup> many a Lye, soe that suffittient Causes of Action hath here Arisen, by what has byn Enacted hereupon, and from the difference grounded Concerning my ship — Therefore, I humbly Craue the merit of the Cause from the ground of the matter may bee here tried,

which is the Ship, and if J haue not a Right to her, J Desier her not, — And Lastly for that the hand of god has been against all, that haue taken my ship & kept her from mee hitherto, and is some grounds to beleue still will bee vntill Restored, whilst the Dutch had her they did owne it in [*torn*] tearmes when they restored me possession of her, and alsoe since m<sup>r</sup> Dudson [*torn*] her in possession, hee has had a fall upon her, and broke his head in a [*torn*] Dangerous manner — and that another man has broke his thigh aboar [*torn*] And lately the Ship was like to bee fired to the danger of the towne, w<sup>ch</sup> are Sad omens — But its possible my partys will say this is from the matter, and plead the ship is a prize — Being Dutch ship and goods, and here is noe power of admerallty Court and not tryable heare, and giue these Reasons to make her a prize — first she was taken by the Kings Commission — Secondly by uertue and power from the kings proclamation — and Thirdly, They Bought their Right of the Gardners, these pretences are in their Declaration all J Conceiue, and one more they haue yett to plead as I am Enformed, that She was found and seized on in the Duke of Yorks persincks; — Now all these pretenses are to keep from A Tryall, by Reason they well know, not one of them will stand good in the tryall and that one good one were worth all — To all which I Craue Leaue to answer as breife as I can possible — First I answer that she was noe Dutch ship nor goods Capable to bee made prize, by Reason she was neuer proued to bee Condemned by any admeralty Court before she was Restored to yo<sup>r</sup> petition<sup>r</sup>, and by him brought und<sup>r</sup> his Command into his Majes<sup>ties</sup> port in safetie and assistance promised, and fredome to come in and goe out w<sup>th</sup> her as appears und<sup>r</sup> the hand of the Cheife in power at Nantuckett — and many presedents wee haue of this to bee noe Dutch ship nor goods, by being taken and kept by the Enemy, others haue byn Seauerall dayes, and then Restored to the master and a Bill of Sale from the Cap<sup>t</sup> of the man of warr, and yett the ship was here Judged when Shee came home to bee the owners; that set her out, and the Cap<sup>t</sup> Bill of Sale was noe title to the master being not Condemned, and this was the mary Rose m<sup>r</sup> Abraham Gorden master from Jaimaca, and m<sup>r</sup> Bollards Ketch m<sup>r</sup> Twing master from Barbados & others — and yo<sup>r</sup> petition<sup>r</sup> was the true owner of this ship now in Controuersie when taken by the Dutch — And as to their first Reason that they tooke her by Commission, J Conceiue they waue that, being ashamed of a Scotch Coppye neuer owned, nor had any power in it at all, — and to the Second — Being the kings proclamation, I answer that they are Like preuaricators, and gone Cleare Contrary to it, and made positieue breach of it, for that the proclamation sayes that his subjects are to Seize and take any Enemies ship and goods, and not his subjects ship and goods and in his majes<sup>ties</sup> ports in safetie as this was long before the pretended partyes Came to her — Thirdly they pretend they Bought their Right of the Gardners — and this seems to bee the most Reasonable plea they haue, To which I answer, soe did J buy my Right of another man, a good Jssue may be Joyned to this plea, and properly Require a Tryall heare, at Common Law, and noe where Els — for what haue any Case of Bargaine & sale to doe w<sup>th</sup> any admerallty Court, Therefore I Humbly Craue the Benefit of this plea for a tryall here, and hee that has the best title by Bargaine & sale to haue the ship, and let them take all other pleas to help it, only this giues Cause sufficient for a tryall heare — and fourthly if they plead shee is A prize being found and Seized in the Duke of Yorks patten, then all the ships of his majes<sup>ties</sup> subjects may bee made prize that Come there by the same presedent and Lastly: that if the bare pretence of any mans pleading



a ship and goods is a prize because they haue seized her and gott possession of und<sup>r</sup> that name or notion and therefore because of the word a prize, that uessell being brought into this harbour, and the partye seized from, Desiers a tryall for his ship againe, and it shall be denyed him a tryall heare, but must bee sent for England for an admerallty Court to try the matter, before any prooffe or papers bee seen and Examined of Each partye, w<sup>ch</sup> Cannot well bee without some tryall to see if it bee a prize and belongs to an admerallty Court — Then by the same practice [*torn*] ship and goods, may, meere piratts (& not soe knowne) seize a ship at sea or in [*torn*] ther harbour, and bring her in heare and plead her a prize and to bee sent for England for a Tryall — and if thus granted what will become of many ships Nay of any in this harbour upon the same account, if not well knowne — and againe that theise my hard and uncharitable parties, should bee soe partiall in their Declaration to this honored Court, and aboute this towne to uillifie mee as before, and accuse mee for betraying my ship to the Dutch, and alsoe that I Ran away w<sup>th</sup> her from holland, and yett will abide noe tryall heare to proue it, (and otherwise Calumniate mee) nor doe they say one word in theyre Declaration or Els where, how they haue acted trecherously, or gone Contrary to the kings proclamation, in seizing his Subjects ship and goods to make prize of it in his majes<sup>ty</sup>s port when in Safety — nor doe they owne by there soe doing they haue Brought a warr upon this Country, and giuen the Dutch a Just pretence, or Cause to take soe many uessells of this Country as they haue done, which if they had left my ship to mee, the dutch would not haue had any Such pretence, because they restored her to mee, by their owne Act and Consent and this Act of my parties seizing her from mee, is lookt upon by the Dutch as an Act of this authoritye being liuers at Boston, and they not being Called to an account for soe doing without ord<sup>r</sup> from Authoritye, and positiuely acting against the kings proclamation, if the Case may bee tryed I doubt not to make good, And that there pretences against mee will proue but meere falacyes and figments, w<sup>ch</sup> they feare, Els why should they not petition for a tryall heare as well as J, and others Concerned in the goods, Except they feare a tryall heare, may bring them within the Breach of the late Act made by this honored Court Concerning seizing of ships from the true owners to be piracy, and how like it, their Act done to mee is J leaue it to Consideration, and whether any Such president haue Euer byn heare and sent to England for tryall, Thus Craueing pardon for my prolixity and that the prouidence of God to mee hitherto, for my releife, may be seriously Considered, with what Else I haue heare presented in the premises, to the serious Consideration of this honorable Generall Court, for a tryall [*torn*] according to my Just Right by the Law of this Jurisdiction; — And yo<sup>r</sup> petition<sup>r</sup> shall as in duty Bound for yo<sup>r</sup> peace & prosperity Euer pray &c

Entred . . . Janu<sup>y</sup> 6. 1673

The General Court voted, January 6, 1673/74, "that henceforth all Cases of Admiralty shall be heard and determinated by the Court of Assistants, and to be Issued by the Bench without a Jury, unless the Court shall see cause to the contrary" (W. H. Whitmore, *The Colonial Laws of Massachusetts*, Reprinted From the Edition of 1672, p. 213); but at the previous session the appeal of this case had been heard and



decided by the General Court. The following verdict (S. F. 162130.1) is also printed in the Massachusetts Bay Records, iv. part 2, p. 574:

Att a spetiall Generall Court Called by the Gou<sup>r</sup>no<sup>r</sup> and magistrates in Boston and there held the 10<sup>th</sup> of December 1673

[The] Court upon the hearing the petition<sup>rs</sup> of Joseph Dudson [Is]jaack Melynes John Alden and william Daruall, hauing Determined not to heare their Cases, for that the Case in which they petition hath arisen from matters Acted without the Jurisdiction of this Court at Nantuckett, and haue byn under the Cognizance of New Plymouth Gouvern<sup>t</sup> alsoe, yett forasmuch as the Complaynants & petition<sup>rs</sup> doe all profess themselves to be his Majes<sup>ties</sup> Subiects, and for that the goods brought in that ship by the said Joseph Dudson are proper for the markt in England, doe therefore declare that the s<sup>d</sup> Dudson hath libertye to fitt the s<sup>d</sup> ship for England [*torn*] som[e] of his Majesties Courts where all persons Concerned may haue A full hearing of their Case

. . . true Coppye . . . Attests Edward Rawson, Secretary

See also Dudson's counter-suit against Darvall, below, pp. 385-7.]

#### GARDNER ags<sup>t</sup> PROUTT

Peter Gardner plaint. ags<sup>t</sup> Timothy Proutt jun<sup>r</sup> Defend<sup>t</sup> in an accion of the case for not delivering the saide Gardner six barrells of Rumm consigned to him from m<sup>r</sup> William Dyer of the Island of Barbados & shipped on board the Ship called the Endeavo<sup>r</sup> of Boston whereof the s<sup>d</sup> Prout was master as will appeare by a bill of Lading under the s<sup>d</sup> Proutts hand bearing date the 25<sup>th</sup> of August 1673 being about twenty pounds to the damage of the plaint. & all other due damages according to Attachm<sup>t</sup> Dat 15:11:73. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

#### ROCK ags<sup>t</sup> CLARKE

Joseph Rock Administrato<sup>r</sup> to the Estate sometime of Iohn Coggan & Martha Coggan of Boston deceased & guardian to Caleb Coggan the onely sonn & heire of the s<sup>d</sup> Iohn & Martha Coggan in his non age deceased plaint. against L<sup>t</sup> Thomas Clarke Defend<sup>t</sup> in an accion of the case for that the s<sup>d</sup> Tho: Clarke have refused & not given or yielded up possession of the house & roomes with the shop & yard wherein hee now dwelleth with all thereto belonging unto the s<sup>d</sup> Rock according as it is specified in an Indenture or lease under the hand & seal of the s<sup>d</sup> Clarke bearing date the first day of August 1663 reference thereto being had with all other due damages according to Attachm<sup>t</sup> Dat Ianuary 19<sup>th</sup> 1673. The Accion being called both

plaint. & Defend<sup>t</sup> appeared & the Attachm<sup>t</sup> being read the Defend<sup>t</sup> made objection against the process for that the plaint. had noe power of Administracion; the plaint. failing in his process for want of prooffe thereof The Court declared him Non Suited. The plaint. appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Ioseph Rock as principall in ten pounds & Ephraim Turner & W<sup>m</sup> Kent as sureties in five pounds apeice acknowledged themselves respectively bound to . . . prosecute his appeal . . .

[ See above, p. 241, from which this series of cases can be traced back. Rock's reasons of appeal and Clarke's answer (S. F. 1286.3, 2) follow:

Joseph Rock Adminestor to John & Martha Coggan deceased his Reasons of Appeale from the Nonsute of y<sup>e</sup> Last Countie Court in the Case betweene Said Rock plaintiffe and Leif<sup>t</sup> Thomas Clarke Defendent for denying me possession To the Honoured Court of Assistance sitting in Boston march 167<sup>3</sup><sub>4</sub>

Because J humbly Conceive there was Sufficient to prove y<sup>e</sup> Plaintifes power of Administracion

1 There was and is y<sup>e</sup> Letter of Administracion granted by y<sup>e</sup> Countie Court in Boston 29 of may 1662 wherein y<sup>e</sup> said Rock hath power of Administracion upon the said Estate he giveing sufficient Security to y<sup>e</sup> Court to be responsible for the same according to y<sup>e</sup> last will of the said John Coggan n<sup>o</sup> 1:

2 There is the Bond for his adminestring according to y<sup>e</sup> power granted by the said Letter of Administracion namely according to John Coggans Will no: 2:

3 There is a Judgem<sup>t</sup> of Court that shews Rock as adminestor to m<sup>r</sup> John Coggan and Martha his wife: was sued by y<sup>e</sup> Gardians of the Orphants Robinson

4 The Plainetiffe hath not pleaded his plene Adminestravi or that he hath performed his administracion neither indeed can he doe it wholly: untill M<sup>r</sup> Coggans Will be performed He may have performed apart by giveing this, or that Legatee their Legasyes and so may have performed such apart of his Administracion relateing to such a person but the whole administracion is not performed untill the Adminestor can plead Nulla Bona or that he hath no Assetts left in hand.

5 J am not acquitted and discharged from my Administracion and untill then the power Remaines.

There is an orдор of a Countie Court Adjourned y<sup>e</sup> 13<sup>th</sup> of November 1673 that if I would pay so much mony namely £348: 13: 4<sup>d</sup> to the Gardians and what Rent is Due from y<sup>t</sup> Estate since the account was made up This orдор being fullfilled J am discharged from my administracion.

Now this Orдор the said Administrato<sup>r</sup> hath not performed nor Can performe with out greate Dammage & pu<sup>r</sup>judice to himselfe For the Following Reasons.

1 Because there is £78: 15ss taken of from the said Rocks charge notwithstanding he had given into y<sup>e</sup> Countie Court and Gardians afforesaid a true account Sworne unto according to y<sup>e</sup> Juryes Verdict which account was Exepted against by the said Gardians as a False account,

And tryed a second time namely at Aprill Court 1673 and there the said Gardians were Cast and the said account found to be just and true,

2<sup>ly</sup> The Second Reason why J could not accept of & performe this Courts order was because this summe of £348: 13: 4 which is £78: 15<sup>s</sup> more then was due to y<sup>e</sup> Estate) This they ordered to be paid to the Gardians afforesaid so that the Order crosseth and make voide that part of John Coggans Will that sayth (and to my Daughter Rock J doe give & bequeath one fifth part thereof) namely all the Legasie given to Caleb Coggan if he dyed under the age of 21 yeares Consequently  $\frac{1}{5}$  part or more of this £269: 18: 4 doth belong unto me which is besides a farther Right J have there in £53: 19: 8 and what the Order would have abated me of my acco<sup>tt</sup>

£78: 15: 0

132: 14: 8:

So y<sup>t</sup> by this Order J must have beene wronged one hundred thirty two pounds foureteene shill<sup>s</sup> and Eight pence

Besides J had hereby beene necessitated to Violate my father Coggans Will which J am bound to act according unto in my Adminestracion —

J should be very glad to be discharged from my Adminestracion so it be upon such Equall termes as might not be prejudicial neither to my selfe or Estate nor to any other person concerned in that Estate

But the question now is whether J am discharged from my Adminestracion Jf J have fullfilled the Order afforesaid J am discharged otherwise not: But J have not performed that Order neither can J doe it for the Reasons affores<sup>d</sup> and therefore J am not discharged J hope this Honoured Court and Jury will plainly see that J am not discharged from my Adminestracion and therefore my power remaines firme And J ought not to have beene Nonsuted at the Last Countie Court from which J appealed and hope that J may here find releife and that my Case may now proceede as it should have done at the Last Countie Court so Commending these things to the Consideracion of this Honoured Court & Jury J remaine

Yo<sup>r</sup> Humble Servant

Joseph Rock

These Reasons were received from m<sup>r</sup> Joseph Rock Feb<sup>ry</sup>: 26<sup>th</sup> 1673

Per Js<sup>a</sup> Addington Cler

Thomas Clarke his Answer to m<sup>r</sup> Rocks reasons of Apeale

I humbly conceaue it being in pointt of a non sute y<sup>e</sup> Court or officer of y<sup>e</sup> Court is to make y<sup>e</sup> answer to them — yet I shall make bould to present this to the Consideration of this Hono<sup>d</sup> Court —

first The estate he was Administrator toa belonnged to an Heyre who died in his nonage and now y<sup>t</sup> estate falls to other Heyres foure whereof are vnder age and haue made Choyse of Gardians, he himselfe being one — soe y<sup>t</sup> as I conceaue m<sup>r</sup> Rocks power as Administrator seaseth — whereby he is as such vncapable to sue for y<sup>t</sup> estate

2 m<sup>r</sup> Rocke is bound in 400<sup>l</sup> bond to giue account to the County Court at all tymes when Called for and to obserue all orders of Court that concerne y<sup>t</sup> estate. An Account he hath giuen — y<sup>e</sup> Court vpon perusall thereof haue ordered him to pay what he had receaued as administrator and remaned in his hand to y<sup>e</sup> Gardians as more particularly by there order may apeare w<sup>ch</sup> order was produced and Read in y<sup>e</sup> former Court and he refuseth to fulfill —

3 The Rent he sues for and possession demanded were Lonng since Gardianship was Granted to others and himselfe and also the order of Court — and therefore the more vnreasonable and illegall for him as administrator to sue for — other things he insist vpon as reasons w<sup>ch</sup> I conceaue are not pertenant to the Nonsuit and therefore shall not conserne myselfe to answere

Thomas Clarke

The appeal was allowed, and the Court of Assistants found for Clarke. Records of the Court of Assistants, i. 3-4.]

[187] CHECKLY ags<sup>t</sup> WILLIAMS

Anthony Checkly Attourney of Theoder Atkinson senio<sup>r</sup> in the behalfe of his daughter Abigail Atkins plaint. ags<sup>t</sup> Cap<sup>t</sup> Iohn Williams Defend<sup>t</sup> in an accion of the case for that the s<sup>d</sup> Williams doth refuse to give possession of a Warehouse a Workehouse & all the Land belonging to the great house also the corner Shop & Sellar under it, w<sup>ch</sup> houseing & Land Lyeth in Boston over against the house & land of Hudson Leverett & was recovered per judgment & Execucion from the s<sup>d</sup> Williams per the s<sup>d</sup> Theoder Atkinson Senio<sup>r</sup> & since Legally conveighed unto Ebenezer Atkinson his son & Abigail Atkinson his daughter per a firme & Legall deed of gift & possession given to one in the behalfe of both. Yet notwithstanding the s<sup>d</sup> Williams hath injuriously entred upon the premises & detaineth the same illegally from the s<sup>d</sup> Abigail who is the Legall & right Owner of the same to her intollerable damage & injury with other due damages according to Attachm<sup>t</sup> Dat Jan<sup>ry</sup> 22<sup>th</sup> 1673. . . . The Iury brought in a speciaall verdict i. e. That if by Law a Deed bee legall that doe run upon condicions in the things given or alienated to a person under age & also under that parent that is the giver & also for his Childe the receiver: if this bee Legall, wee finde for the plaint. that the Defend<sup>t</sup> give possession of the houses & Lands sued for & costs of Court; if it bee not legall wee finde for the Defend<sup>t</sup> costs of Court: The Magistrates declare for the Defend<sup>t</sup>, The plaintife appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Anthony Checkly as principall in ten pounds and Rich<sup>d</sup> Wharton & Nicholas Page as Sureties in five pounds apeice acknowledged themselves respectively bound to . . . prosecute his Appeal . . .

[See case of Atkinson v. Williams, pp. 53-59, 95, and 247, above; also Records of the Court of Assistants, i. 4-5.]



PATTEN ags<sup>t</sup> DYER

Thomas Patten Attourney unto Iohn Patten of Severls in the parish of Crewkern in the County of Somers<sup>t</sup> in the Kingdom of England yeoman who is the Lawfull and proper heire of or to the Estate of Nathaniell Patten late of Dorchester in New-England deceased plaint. ags<sup>t</sup> Gyles Dyer Defend<sup>t</sup> in an accion of the case for that the s<sup>d</sup> Dyer doth refuse to deliver possession & rent for one yeare or thereabout at fifteen pounds per yeare for a certain house & teniment which the s<sup>d</sup> Dyer now occupieth in Boston. [ 188 ] which belongeth unto the s<sup>d</sup> Iohn Patten as heire aforesaide, by reason of which refusall of possession & rent the s<sup>d</sup> heire is damnified to the value of the afores<sup>d</sup> Summe or thereabout with other due damages according to Attachment Dat Ianuary 20 1673. . . . The Iury . . . founde for the Defend<sup>t</sup> costs of Court: The plaint. appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Tho: Patten as principall in ten pounds & Rich<sup>d</sup> Wharton & Anthony Checkly as Sureties in five pounds apeice acknowledged themselves respectively bound to . . . prosecute his Appeal. . . .

[For the preliminaries of this case, see pp. 81, 93, 95, 107, 109-110, 215, 216. A copy of the writ, return, and bond is in S. F. 1280.1. In the following Reasons of Appeal (S. F. 1280.3), the "Law" frequently referred to by page is The General Laws and Liberties of the Massachusetts Colony, 1672.

Thomas Patten Atturney of John Patten of Seueralls in the Parish of Crewkerne in Somerset Sheire in England his Reasons of Apeale from y<sup>e</sup> Judgment of y<sup>e</sup> County Court in Boston in January 1673. To the Hono<sup>d</sup> Court of Asistance Stitting in Boston in March following Jn the Case betwixt the Said Tho Patten plaintiff & Gyles Dyer defendant — Viz —

1: Reason is because all Estates espetially Lands & Heridatements belonging to A Soluent Intestate person Dieing without Jssue falls to y<sup>e</sup> next of kin: See: Law Wills fo: 158 Sec 2. Administration Must bee granted to y<sup>e</sup> next of Kin or to Some body to preserue for y<sup>e</sup> next of Kin — Againe Law Conueyances — Shews plainly that y<sup>r</sup> is An Heire & Estate of Jnheretance here & theirfor directs how Land & Houses in fee Simple Shall bee Conveighed —

2 Reason is because m<sup>rs</sup> Justin Patten y<sup>e</sup> Relict of m<sup>r</sup> Nath Patten Deceased (Although Administrato<sup>ix</sup>) yet is not either Heire or Assignee of m<sup>r</sup> Nath Patten Deceased but only hath A title of Dowrie to  $\frac{1}{3}$  of y<sup>e</sup> Housing & Land according to y<sup>e</sup> Law title Dowrie (which is not denied hir) dureing hir life, The deed is to Nath Patten his Heires & Assignes — Jf m<sup>rs</sup> Justin Patten bee neither of y<sup>m</sup> how Comes Shee by hir right or title Their is noe Conveighance (apearing) vnd<sup>r</sup> m<sup>r</sup> Pattens hand & Seale either Deed or Will to Assigne y<sup>e</sup> premises to hir — And

our Law Saith their Shall bee noe Alienation of Houses & Lands but by deed in Wrighting — or by will — Now y<sup>r</sup> is noe Will neither Written or Nuncupative — as appeares per Administration being granted which is neuer done but vpon Intestate persons Estates —

Neither is Shee Heire A woman is not Heire to hir husband but only hath A title of Dowry as our law prouides

3 Reason is Because J Conceiue with all humble Subjecti[on] The County Court hath not power to alienate Houses or Land of an Intestate from y<sup>e</sup> Heirs — although as for Mouables they may Assigne y<sup>e</sup> widow hir part & y<sup>e</sup> Children & other Heires their portions as per y<sup>e</sup> Law wills which Shews their is other heirs in law (besides Children) vnto mouables much more to Houses & Lands which are Estates reall, also the Said Law Shews (in my Apprehension) that y<sup>e</sup> Courts power is limited in y<sup>e</sup> Disposall & Setlement of Mouables of an Intestate they must bee disposed to [torn] Widow Children & other Heires, & not from ye Hei[re]s] And J thinke this law Relates only to mouables or Estates personall — Jf Soe y<sup>n</sup> y<sup>e</sup> Court hath noe power at all to dispose of Lands & hereditaments y<sup>e</sup> Law Dowries saith y<sup>e</sup> widow Shall haue A third part. See dowries fol: 42 — This Law Dowries is not repealed — but is of force theirfore Jt Canot bee rationall that y<sup>e</sup> Estate mentioned in Wills 158: sect 3 which y<sup>e</sup> County Court hath power to Assigne y<sup>e</sup> widow Such A part of as they Shall Judg Just & equall — Can bee ment<sup>t</sup> of houses & Land — but only of Mouables — for then The Law would Contradict it Selfe, y<sup>e</sup> Law wills would Say A widow may haue either  $\frac{1}{10}$  or but  $\frac{1}{10}$  of hir Husband Houses & Land as y<sup>e</sup> County Court Shall Judg Just & equall — & y<sup>e</sup> Law Dowries Saith Shee shall haue Just  $\frac{1}{3}$  part but J hope y<sup>r</sup> is noe Such disagreement or Incongruitie in y<sup>e</sup> Law — Theirfore it Seemes plaine to mee y<sup>t</sup> y<sup>e</sup> County Court hath noe power at all by y<sup>e</sup> Law — Wills to Settle Lands & Heridataments of an Intestate — but They fall to y<sup>e</sup> Heire —

Againe J request y<sup>e</sup> hono<sup>d</sup> Court to Consid<sup>r</sup> y<sup>e</sup> Law Dowries proues pla[in]ly The widow of An Intestate & y<sup>e</sup> Heire are two Distinct persons — y<sup>e</sup> widow is not y<sup>e</sup> Heire — the Heire is to Set out to y<sup>e</sup> widow of y<sup>e</sup> Intestate the Just 3<sup>d</sup> part y<sup>e</sup> heire is y<sup>e</sup> person Setting out & y<sup>e</sup> person to whom y<sup>e</sup>  $\frac{1}{3}$  part is to bee sett out is y<sup>e</sup> widow — one y<sup>e</sup> Heire y<sup>e</sup> other y<sup>e</sup> Widow

4 Reason is because Jn<sup>o</sup> Patten aforesaid is Right Heire to Nath. Patten aforesaid hee is his next Brother theirfore y<sup>e</sup> next of Kin as apears by y<sup>e</sup> testimonies Theirfore hath y<sup>e</sup> Right per Law vnto the premises, and its noe wrong to y<sup>e</sup> Widow who hath not only hir title of Dowry but A very Consid<sup>r</sup>able estate also — in Mouables — as per the Inuentory may appeare — Jf y<sup>e</sup> Estate Reall in houses & Lands bee Substracted from y<sup>e</sup> whole Inuentory Their is Remaineing in y<sup>e</sup> Widows hand in Mony goods & good Debts — the vallue of £562-00 mony — which with y<sup>e</sup>  $\frac{1}{3}$  of y<sup>e</sup> Estate Reall is A very Comfortable Estate which J hope may bee enough to find hir A Comfortable maintenance during hir Life And also bee Suficient to Raise A portion for Ben<sup>n</sup> Beale Sutable either to y<sup>e</sup> Relation y<sup>r</sup> was betwixt him & Nath Patten as A Remoate kinsman Not of y<sup>e</sup> wholl blod — And also Sutable to all y<sup>e</sup> Jngagements y<sup>r</sup> was in m[<sup>rs</sup>] Patten to doe for him, soe as Shee as y<sup>e</sup> widow Nor hee as A Kinsman need not Seeke to disinherit y<sup>e</sup> Right & Lawfull Heire —

Humbly requesting the honou<sup>d</sup> Court & Jury to Consid<sup>r</sup> y<sup>e</sup> premises which is of Soe great Consequence Not on[ly] to Jn<sup>o</sup> Patten But vnto posterity Crauing pardon for what may seeme to reflect vpon y<sup>e</sup> Honoured Court apealed from

herby Solemly declaring that J Jntende noe reflection vpon y<sup>m</sup> — but only A Cleare Dem[onst]ration (Acor ding to Law) of y<sup>e</sup> Justness & equitye of my Case Now Comitted vnto yo<sup>w</sup> whose J am Acor ding as in duty bounde —

Tho Patten — Attorney as aforesaid

These Reasons of Appeal were received from Thomas Patten Feb<sup>ry</sup>: 25<sup>th</sup> 1673  
per Js<sup>a</sup> Addington Cler

Dyer's Answer (S. F. 28659) follows:

Giles Dyer His Answ<sup>r</sup> to Thomas Patten Attorney to his Father John Patten Resons of Appeale:

Jmp<sup>rs</sup> As to his First p<sup>r</sup>tended Reson or Assertion that the whole Estate of a p<sup>r</sup>son Dying Jntestate falls to y<sup>e</sup> next A kin: Wee Vtterly Deny. And for his prooffe he sites y<sup>e</sup> Law title Wills sect: 2<sup>d</sup>: Which Law Wholly belongs to Merch<sup>ts</sup> Seamen And other Straing<sup>rs</sup> Resorting hither Dying & Leauing there Estates vndisposed of and hauing noe Wife nor Children here but haue there Relations as Wife & Children Jn Other parts of y<sup>e</sup> Wourld as y<sup>e</sup> Law Doth Absolutely & Clearly Demonstrate and hath noe Ration at All to Nath<sup>l</sup> Patten of Dorchester that Dyed here: And before y<sup>e</sup> Law bee Altered y<sup>e</sup> Appellantts Case Can haue noe Dependance vpon itt

2: To his 2<sup>d</sup> Assertion or p<sup>r</sup>tended Reson itt hath Litle of Reson or Law in Itt as J Conceauae. For him to say that she is neith<sup>r</sup> Heire nor Assigne of m<sup>r</sup> Nath<sup>l</sup> Patten Deceased, I Answ<sup>r</sup> Although shee Be neither Heire or Assigne yet she is the Relict of Nath<sup>l</sup> Patten And that part of y<sup>e</sup> Estate that she hath Allowed to her is hers of Right by vertue of Law title Wills Sect the 3<sup>d</sup> Page 158 w<sup>ch</sup> saith y<sup>e</sup> County Courtt hath pow<sup>r</sup> to Allow the Widdow such A part of y<sup>e</sup> Estate of y<sup>e</sup> Deceased as they shall Judg Just and Equall And this Estate now sued for they haue Allowed And giuen to y<sup>e</sup> Relict of y<sup>e</sup> said m<sup>r</sup> Patten As Apereth by the Courtt Record. Which Law Formly Coated Title Wills Sect: the 3<sup>d</sup> Doth Absolutely Say That the County Court Are Jmpowred Soe to Act which J Desire the Hono<sup>rd</sup> Court And Jury to Consid<sup>r</sup> of and peruse the same:

3. And To his 3<sup>d</sup> Reson whereas he saith the County Courtt hath noe pow<sup>r</sup> To Allienate Houses and Lands from the Heire: I Answer first the Hono<sup>rd</sup> Courtt Hath pow<sup>r</sup> to Alienate or Giue to y<sup>e</sup> Widdow what Part of y<sup>e</sup> Estate y<sup>e</sup> Deseased Left And Jf houses and Lands be part of y<sup>e</sup> Relicts Estate then they haue Pow<sup>r</sup> to giue to y<sup>e</sup> Widdow y<sup>e</sup> houses and Lands — or what part of them they please as by y<sup>e</sup> Law before Recited Appeares; but from y<sup>e</sup> heire it is nott Giuen butt A partt As they see good Js giuen to y<sup>e</sup> Widow and the Rest Js giuen to y<sup>e</sup> Right Heire in Law According to o<sup>r</sup> Law: 2dly Whereas He saith it is only Ment the Meoueables: All Estates in this Country by o<sup>r</sup> Law Are Chatles nott Jnheritances soe y<sup>t</sup> y<sup>e</sup> Widdow hath A Just And Legall Right to A partt in All & such A part as the Courtt shall Judg meette: And for him to say shee Must Come to him for her thirds of y<sup>e</sup> Estate, y<sup>e</sup> Defend<sup>t</sup> Humbly Conceaues that the Relict wold haue As Litle A partt of y<sup>e</sup> Estate as she had of the mony her husband Left in his Chest when he Dyed and that he was too much betrusted with y<sup>e</sup> kee of her husbands Chest, For Jf he had been true & trusty he wold haue made his Words good that it Wold after his vnkells Death Appeare y<sup>t</sup> benjamin Beale was y<sup>e</sup> sole Executor & Heire of her Husbands Estate, and 3<sup>dly</sup> to y<sup>e</sup> Law, Title Dowries Jtt hath Relation to Estates sold by y<sup>e</sup> Husband without the Consentt of y<sup>e</sup> Wife that she



shall haue her thirds of y<sup>e</sup> Same During her life notwithstanding Sold by her husband before his Death which Js to p<sup>t</sup>uentt men from Leauing there Wiues Destitute

4. To his 4<sup>th</sup> Reson That John Patten Js Right Heire to M<sup>r</sup> Nath<sup>l</sup> Patten And the nextt Brother Js yett to proue And that He is y<sup>e</sup> nex<sup>t</sup> Akin is nott att all Proued: Butt wee haue Sufficiently proued Benjamin Beale to bee the Nex<sup>t</sup> of kin And the Rightt Heire to the Estate by Will and by Gift for he had [partt] of M<sup>r</sup> Nath<sup>l</sup> Pattens Estate giuen to him and Jn his possession before his Death as all that att Halseys wharfe and Receiued the Rentt of the same and After y<sup>e</sup> fire was & had burned Downe the Housing M<sup>r</sup> Nath<sup>l</sup> Paten Wold not build them vp againe because he said he had giuen them to Benjamin Beale: soe y<sup>t</sup> by Will and by Gift Jtt is sufficiently proued y<sup>t</sup> Benjamin Beale is y<sup>e</sup> Rightfull Heire to y<sup>e</sup> Estate of y<sup>e</sup> Deceased Patten And for him to say that the meoueables were A sufficient Estate for m<sup>rs</sup> Justin Patten and fo<sup>r</sup> Benjamin Beales Portion J hope it will nott Come to y<sup>t</sup> that the Widdow and the Heire shal be Att his Disposall, the Estate being already Disposed of By the Hono<sup>rd</sup> County Courtt who had Sufficient pow<sup>r</sup> soe to Doe & haue Done According to Law: And for the Appellantt to say y<sup>t</sup> Benjamin Beale is Nott of Blood I Wond<sup>r</sup> he will Assert such A positieue vntruth, Butt Jf an own sisters son be nott Blood J Leaue to y<sup>e</sup> Hono<sup>rd</sup> Courtt and Jury to Judg: soe Hauing sufficiently proued the Estate of Right By Law to belong to m<sup>rs</sup> Justin Patten J shall Leaue Jtt to y<sup>e</sup> Hono<sup>rd</sup> Courtt And Jury Hoping & nott questioning butt the Hono<sup>rd</sup> Courtt and Gentlemen of the Jury Will see Just Cause to Confirme the form<sup>r</sup> Juries Verdict:

Giles × Dyre

The Court of Assistants confirmed the former judgment and costs, 51s 6d. Records of the Court of Assistants, i. 4. See also the second and fourth cases below.]

#### FAYREWEATHER ags<sup>t</sup> MELYN

Iohn Fayreweather, plaint. against Isaac Melyn Defend<sup>t</sup> in an accion of the case for abusive words & blows given him by the s<sup>d</sup> Melyn & other due damages according to Attachm<sup>t</sup> Dat Decembr<sup>r</sup> 30 1673. . . . The Iury . . . founde for the plaint. three shillings & four pence damage & costs of Court.

#### PATTEN ags<sup>t</sup> WOODY

Thomas Patten Attourney unto Iohn Patten of Severls in the parish of Crewkern in the County of Sommers<sup>t</sup> in the Kingdom of England yeoman who is Lawfull & proper heire unto the Estate of Nathaniell Patten late of Dorchester in New-England deceased plaint. ags<sup>t</sup> Isaac Woody Defend<sup>t</sup> in an action of the case for that the s<sup>d</sup> Woody doth refuse to deliver possession & rent for two yeares or thereabout at Fifteen pounds per yeare for a certain house or



tenement which the s<sup>d</sup> Woody now occupieth in Boston which belongeth unto the s<sup>d</sup> Iohn Patten as heire afores<sup>d</sup> by reason of which refusall of possession & rent the s<sup>d</sup> heire is damnified to the value of the afores<sup>d</sup> Summe or thereabouts with other due damages according to Attachm<sup>t</sup> Dat Ianuary 20 1673. . . . The Iury . . . founde for the Defend<sup>t</sup> costs of Court. [ 189 ]

[See the second case above, and the second case below.]

LONG ags<sup>t</sup> PAUL

Ioseph Long plaint. ags<sup>t</sup> Sammuell Paul Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat 21 : 11<sup>mo</sup> 73. The plaint. withdrew his accion.

PATTEN ags<sup>t</sup> WINSLEY

Thomas Patten Attourny unto Iohn Patten of Severells in the parish of Crewkern in the County of Sommers<sup>t</sup> in the Kingdom of England yeoman who is the Lawfull & proper heire of or to the Estate that sometimes was Nathaniell Pattens Late of Dorchest<sup>r</sup> in New-England deceased plaint. ags<sup>t</sup> Iohn Winsley Defend<sup>t</sup> in an accion of the case for that the s<sup>d</sup> Iohn Winsley doth refuse to deliver possession of a certain warehouse & Land belonging & adjoining to the same lying & being upon the Land commonly called Halsey's wharfe which warehouse & Land is between the brewhouse & Land in the possession of Robert Cox & another Warehouse in the possession & occupation of s<sup>d</sup> Iohn Winsley which belongeth unto s<sup>d</sup> Iohn Patten as heire afores<sup>d</sup> by reason of which refusall of possession the s<sup>d</sup> heire is damnified to the value of the aboues<sup>d</sup> Summe or thereabout with other due damages according to Attachm<sup>t</sup> Dat Ianuary 20 1673. . . . The Iury . . . founde for the Defend<sup>t</sup> costs of Court.

The plaint. appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Tho: Patten as principall in ten pounds & Nicholas Page & Anthony Checkly as Sureties in five pounds apeice acknowledged themselves respectively bound to . . . prosecute his Appeal . . .

[Another of the series of cases about the Patten property: cf. Patten v. Dyer, above, p. 373. Thomas Patten's power of attorney from John Patten follows (S. F. 1281.6):

To all to whome these pu<sup>r</sup>sents shall come, I Iohn Patten of Severell in the parish of Crewkern in the County of Somers<sup>t</sup> in the Realme of England Yeoman

send greeting Know yee that I the sd. Iohn Patten being eldest brother & heire of Nathaniell Patten late of Dorchester in New-England now deceased haue constituted made & ordeined & by these pu'sents doe constitute make & ordeine & in my place & steed doe put my Loving sonn Thomas Patten now in New-England my true & lawfull Attourney to enter into & upon all & every such lands & tenements & hereditam<sup>ts</sup> which haue or ought to haue by Law or equity or according to the usage & custom approved of in New England afores<sup>d</sup> hapned unto mee as heire to my said brother & to sell let & dispose of the same at his discretion for my best benefit & advantage Giving & granting unto my sd Attourney full power licence & Authority to Sue arrest or implead all & euery person & persons whatsoever that shall deteine from him the possession therof before any lawfull Iudicatory whatsoever & to constitute one or Attournies under him for the better recovery thereof Ratifying confirming and allowing all & whatsoever my saide Attourney shall lawfully doe or procure to bee done in the p'misses by vertue of these pu'sents. In Testimony whereof I the sd. Iohn Patten haue hereunto put my hand & Seale the thirtieth day of March in the four and twentieth yeare of the Reigne of o<sup>r</sup> Sovereigne Lord Charles the Second by the grace of God of England Scotland France & Ireland King Defender of the Faith &c Annoque Dom. 1672.

John Patten (a seal)

*[Witnesses, attestations and endorsements omitted]*

There are over a dozen depositions in S. F. 1281, all to the same effect, of which the following are a fair sample:

S. F. 1281.11

Justin Patten aged about Eighty six Yeares deposed testifieth that Shee was present when her Sister Bale the mother of Benjamin Bale & Sister to her husband Nathaniell Patten deceased lay upon her death bed Long since in England & Shee the sd. m<sup>rs</sup> Bale at that time expressed much trouble lying upon her concerning her sonn Benjamin how hee might bee provided for after her decease? Whereupon the husband of this Deponent aforesd. applying himselfe to his sd. Sister Bale desired her not to trouble herselfe in that matter for hee would take her Sonn Benjamin to bee as his own Childe whereupon Shee was much gladded and cheered And accordingly the sd. Nathaniell Patten did forthwith take charge of the sd. Benjamin & paide for his Nursing & Education in England for many Yeares together & afterwards hee brought over the sd Benjamin into New-England & here tooke the like care of him & still expressed the same purpose towards him. And further this Deponent saith that her husbands Father when hee dyed gaue all his land to Iohn & Thomas Patten the Younger brothers of her husband Nathaniell Patten & further saith not.

Taken upon Oath May. 5<sup>th</sup> 1673

Before us. William Stoughton  
Edward Tyng

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

S. F. 1281.12

The Deposition of Robert Cox aged about 40. yeares testifieth & saith

That about three yeares past Nathaniell Patten of Dorchester now deceased did positiuely declare to him at his house at Dorchester & severall times since

that hee had appointed & ordered Benjamin Beale to act in & dispose of his concerns in a house scituate or being on the land formerly belonging to George Halsy, in which house the sd. Deponant formerly lived: and that m<sup>r</sup> Patten Ordered the Keys of the sd. house to bee left by the Deponant in the hands of Benjamin Beale, the sd. Patten Saying that hee had giuen possession & giuen order unto the sd. Benjamin Beale & full power to dispose of & looke after the land neere to the sd. house & further this Deponant saith not.

Taken upon Oath, Novemb<sup>r</sup> 1: 1672: before

Edw: Tyng Assist.

Copia vera per Js<sup>a</sup> Addington Cler

The Deposition of Iohn Carthew aged about. 33. yeares testifieth & saith.

That about three yeares past hee was tenant in a house scituate or lying on the land formerly belonging to George Halsey & which house hee tooke & rented of Benjamin Beale in a short time after Robert Cox had left it: and the Deponant further testifieth & saith that hee did severall times make a tender & offer of the rent of the sd. house to m<sup>r</sup> Nathaniell Patten of Dorchester now deceased, the sd Patten affirming that there was noe rent due unto him refused to receive it & further this Deponant saith not.

Taken upon Oath. Novemb<sup>r</sup> 1: 1672.

before Edw. Tyng Assist.

Copia Vera per Js<sup>a</sup> Addington Cler

S. F. 1281.15

The Testimony of Iohn Pelton aged 60. yeares or thereabout & Henry Mare aged about 38 yeares testifieth & saith that they urging m<sup>r</sup> Nathaniell Patten of Dorchester now deceased to Settle his Estate upon the Pattens; but the sd Nathaniell Pattens answer to us was that they were knaues & that they had cheated him & further saide that neither his Cousen Thomas Patten nor his brother Iohn Patten nor his Cousen Iohn Patten should ever enjoy a doite of his Estate & further saith not: Iohn Pelton further saith that hee heard m<sup>r</sup> Nathaniell Patten say that if hee should not doe well for his Cousen Benjamin Bale that hee should be a knaue, for saide hee I tooke him from his Mother when hee was young & that hee tooke him as his own & that hee would doe well for him & further saith not.

Sworn in Court by both persons each for himselfe 29<sup>th</sup> Ian<sup>ry</sup> 1673 as Attests  
I. A. C.

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

S. F. 1281.16

The Testimony of Sammuell Pelton aged 24 yeares or thereabouts testifieth & saith that about Iuly 1671 I was going up to the westward & goeing to see m<sup>r</sup> Nathaniell Patten late of Dorchester before I went away, hee told mee that Henry Harwood Shoemaker was in his debt & desired mee that if I went in at Milford to see whether I could get his debt or noe; I asked him how much it was & to shew mee the writing, hee then being sick bid mee looke in his Chest for the writing & overhaling severall writings I tooke up a lardge peece of paper, opening the paper hee told mee that was not it I asked him if hee was sure of it, he told mee yes, for that was his will & then I asked him if it was a late will, hee

told mee yea sure for hee had finished it but the other day; & I told him hee had a new Cousen come now & I asked him if hee had given him anything; hee told mee hee thought Iohn & hee were both knaues & hee would give never a one of them a groat, though Iohn Patten was gone away & had carried a hundred & fifty or two hundred pound from him, hee would make his Father to pay him the utmost Farthing of it, for hee did apprehend that hee was a knaue too; I also asked him what hee would giue his Cousen Benjamin Beale; hee told mee that sure hee would give Benjamin Beale more then hee did expect, hee saith also that the paper Owned by m<sup>r</sup> Patten to bee a will had a Seal to it.

Sworn in Court Feb<sup>ry</sup>: 1: 1672. Attest I. A. C

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

Thomas Patten's Reasons of Appeal follow (S. F. 1281.9):

Thomas Patten Attourney to his Father John Patten of Severalls in the parish of Crewkern in the County of Sommersett in the Kingdom of England, his Reasons of Appeal to this Honoured Court of Assistants from the Iudgment of the Last County Court held in Boston in January. 1673. in the case betwixt himselfe plainti<sup>(ff)</sup> & M<sup>r</sup> John Wensley Defendant.

1. Reason, the Legall Right & title unto the pu<sup>r</sup>mises doth appertain unto the sd. John Patten —.

2<sup>ly</sup>: Because Benjamin Bale who is the pretended Owner hath noe title unto the same. —.

For the Explanation of these foregoing Assertions I shall Lay down & prove

1. That all Lands & hereditaments belonging to a solvent person, the s<sup>d</sup> person dying intestate not having disposed of s<sup>d</sup> Lands in his lifetime fall to the next of Kinn —.

2. That m<sup>r</sup> Nathaniell Patten dyed intestate. —.

3. That hee did not by what appeares dispose of this Estate in his lifetime.

4: That John Patten afores<sup>d</sup> is that person next of Kinn & the right heire of Nathaniell Patten afores<sup>d</sup> deceased. —.

1. For the first See Law, Wills. 2. Sect. fo: 158. where Administracion must bee granted to the next of Kinn or to such as shall keepe & secure the same for the next of Kinn: here it's plain the next of Kinn haue the title — Again the same Law. Sect. 3<sup>d</sup> when the husband or parent dye intestate the County Court of that Iurisdiction shall have power to Settle the Estate per assigning & setting out the Widow & Children or other heires theire severall parts & portions of the sd Estate: here the Courts power [I] humbly conceive is limited — they may Settle the Estate upon the heires but not give it from them, this Law shews plainly there are heires unto whome Estates descend — Moreover the Law Conveyances. Sect. 2. directeth how to convey Jnheritances — Namely to have & to hold the houses or Lands to the Grantee his heires & assignes for ever; well then here is Estates of Inheritances & heires per o<sup>r</sup> Law, from whome the County Courts have not power to give these Jnheritances — I hope I shall not bee soe mistaken as if I ment o<sup>r</sup> Lands to bee such Inheritances as cannot bee alienated per will or Deed or taken per Execucion for Debt I doe not argue soe (although per intailes they may bee made soe) Yet this is true that though they may bee sold or given or taken for debt Yet when noe such thing is & the Owner dyeth intestate, then they fall to the heire — Namely to the next of Kinn or most worthy of the whole



blood; by o<sup>r</sup> Charter wee hold o<sup>r</sup> Land in free & common Soccage, now that tenure descends to heires as other Lands doe — being in fee Simple as this house & Land in question is: See the Deed from Halsey to Nathaniell Patten is it not to him his heires & Assignes for ever; which tearmes make it fee simple — This Estate must fall to the heire or to the Assignes — now if it bee not legally Assigned it is Iohn Pattens as heire — Now concerning Assignements such as may Alienate land & houses from the Granter & his heires they must bee made either per will or by Deed; as for Wills they may bee either Nuncupative or written; but m<sup>r</sup> Nathaniell Patten dyed intestate; neither making Nuncupative or written Will, The Courts granting Administracion upon the Estate sufficiently proveth that, therefore I shall not insist upon it; Jt being cleare that here is noe Assignment of the pu<sup>r</sup>misses per will Again t[here] is noe Assignment of this Estate per Deed & without it bee done either per will or Testament or per Deed in writing it's not good in Law: — See Conveyances Deeds & writings Sect: 1: 2: — fo: 32 — where it's plaine that alienations of houses & Land shall not bee good in Law except the same bee done per Deed in writing except Land given per a Town or per will — Now all the testimonies which the Defendant hath brought doe not at all prove there was any Deed of gift made to Ben: Bale per m<sup>r</sup> Nath: Patten some say hee promised to doe it & some say hee saide hee had done it, but none say soe much as that hee declared J doe doe such a thing: But if there had been 20. Witnesses that had Sworn they heard m<sup>r</sup> Patten Say I doe give Ben<sup>n</sup> Bale this or that house or Land — its' noe title for o<sup>r</sup> Law allowes of noe verball Deeds or alienations, except per will & here is noe will at all: Therefore Ben<sup>n</sup> Bale is not the Assignee of m<sup>r</sup> Nathaniell Patten in the pu<sup>r</sup>misses, there being noe Deed or Will to make him soe: And as for what is contained in the testimonies concerning M<sup>r</sup> Pattens taking Ben<sup>n</sup> Bale as his heire, Some say hee brought him over as his Childe, some others say m<sup>r</sup> Patten saide hee intended to doe well for him & some say hee saide hee had given him the land at Halsy's wharfe & others afterwards say, hee said hee intended it: But where is the act of Adoption proved or any other legall act either per Deed or Will to prove Ben<sup>n</sup> Bale either heire or Assignee to the pu<sup>r</sup>misses: If soe bee that M<sup>r</sup> Nathaniell Patten had such a kindness for for him that hee intended to use him as a Sonn; why did hee not Settle [torn] of the Estate upon him whilst Living: Jts' very likely hee though[torn] hee was none of his Childe, or else doubtless he would haue gi[torn] something considerable at his comming to age, which is long sin[torn] marriage — Soe it's plaine that Ben<sup>n</sup> Bale is neither heire n[torn] to Nathaniell Patten: The Deed is made to Nathaniell Patten [torn] & assignes for ever: Ben: Bale is neither of them: how comes [torn] his title? If it's saide it is settled upon him per the County Court — J haue saide & proved per Law that the Court hath noe such power, in the Law title Wills. Sect. 3 —. (which Estate relates onely to Movables — as J shall after demonstrate) There the Courts power is Limited, it cannot bee given from Children or other heires, and there the eldest Sonn must have a double portion and if no Sonns, then the Daughters shall inherit as Copartners — Now if the Courts power bee so Limited, that they cannot dispose of intestate persons Movables, but to widow, Children, or other heires; much more must it bee Limited in disposall of Lands in fee simple — My Arguments to prove the Law before quoted relates onely] to Movables & not to houses & Lands & other hereditaments are the Law, title Dowers — fo: 42 expressly saith, a woman shall have a third of houses & Lands &c. but the Law title Wills gives power to the County Court to give

such a part of the Estate as they judge just & equall to the Widow — Now if this bee ment of house & land the Law Dowries & Wills contradict one another; but I hope there is noe such incongruity in o<sup>r</sup> Law — J hope it's proved that the Court hath noe power to alienate houses & Lands from the right heires. Again in point of Reason it cannot bee thought they may dispose of intestate persons Estates according to their own pleasure — If soe then might they Settle Estates upon Strangers as well as upon Relations; which would prove of ill consequence to posterity —

Again for the proove of the last thing — Namely that John Patten is next of Kinn to Nathaniell Patten, the severall testimonies relating thereunto will & doe sufficiently prove it —

Therefore the pu<sup>r</sup>misses in controversy doe appertain unto him falling unto him per naturall descent, in regard m<sup>r</sup> Nathaniell Patten dyed intestate, & also noe other way alienated his Estate from his heire at Law, nor could it bee soe alienated per the Court — Neither was hee soe indebted as to require any of his houses & Lands to goe for Satisfaction — humbly requesting this Honored Court & Jury seriously to consider the pu<sup>r</sup>misses; which doe not onely deeply concern the Appealants Father; but also is of publike concernment to the Country: Craving pardon for any thing that may bee taken amiss herein — J subscribe myselfe:

Yo<sup>r</sup> humble Servant

Tho: Patten Attourney as afores<sup>d</sup>

These Reasons of Appeal were received from Thomas Patten February 25<sup>th</sup> 1673

per Js<sup>a</sup> Addington Cler.

Richard Way, John Winsley's attorney, replied thus to Patten's Reasons of Appeal (S. F. 1281.8):

Imp<sup>rs</sup> To his First Wee possitiuely Deney And Doe Affirme he hath Rightt nor title to y<sup>e</sup> p<sup>r</sup>misses sued for.

2. To His 2<sup>d</sup> Wee Waue his Negation and Affirme y<sup>t</sup> Benjam[in] Beale Js y<sup>e</sup> True And Rightfull Owne<sup>r</sup> of y<sup>e</sup> p<sup>r</sup>misses sued for:

And As to his Explanation of his forgoing Assertions y<sup>t</sup> y<sup>e</sup> Said Patten Dying Jntestate Jtt Doth of Right belong to y<sup>e</sup> nextt of Kin. 1<sup>st</sup> J Deny he dyed Jntestate for Wee haue proued he made a verball Nuncupatiue Will Fo<sup>r</sup> he y<sup>e</sup> said M<sup>r</sup> Nath<sup>ll</sup> Patten vpon his Death bed said before Seuerall Wittnesses thatt y<sup>e</sup> Pattens should haue Nothing to Doe w<sup>th</sup> Any part of his Estate nott somuch As A Doit of it therefore y<sup>e</sup> pattens y<sup>t</sup> p<sup>r</sup>tend An Jntrest Jn itt are Cutt off by Will w<sup>ch</sup> Wee haue proued & Jf they Will goe to y<sup>e</sup> next of Kin Benjamin Beale who is y<sup>e</sup> sisters son is y<sup>e</sup> nextt of Kin, so y<sup>t</sup> Jf Right y<sup>e</sup> nextt of Kin must haue y<sup>e</sup> Estate then Benjamin Beale must haue it by his Own Argumentt And Also Jtt Doth belong to him being y<sup>e</sup> Adopted son of y<sup>e</sup> deceased who took him from his Mothers Breast & promised y<sup>e</sup> same to his sister vpon her Death bed to Make him his heire & so putt him Outt and paid For his Nurseing & schooling in England and Went Ouer out of New Eng<sup>ld</sup> to old England to fetch him & Entertained him Jn y<sup>e</sup> Cabbin of y<sup>e</sup> Ship, 2<sup>dly</sup> By Donation Wee proue by Sufficientt Wittness that said Beale should haue All his Estate After his Decease and this Estate In Controu<sup>rsy</sup> the Deceased gaue both befor in his Life time and vpon his Death

bed Just befor he Dyed he gaue all he had to Benjamin Beale Before seuerall Wittnesses Therefore hauing proued by Donation and by A Noncupatiue Will the Estate to bee Benjamin Beales, and if it Were only by two Wittnesses, Jtt Were Sufficient by y<sup>e</sup> Law of God and o<sup>r</sup> Law. For y<sup>e</sup> Law of God Saith thatt by y<sup>e</sup> Mouth of Two or: 3: Wittneses Euery thing shall be Confirmed, Especially vpon Wills w<sup>ch</sup> is A sollemn thing to be Obserued And kept by y<sup>e</sup> Scripture Rules. And Also o<sup>r</sup> Law saith & Confirmeth y<sup>e</sup> same and Js grounded therevpon and hath ben y<sup>e</sup> practise of o<sup>r</sup> Courts Jn New England

3. Jf this Estate belongeth to any p<sup>r</sup>son by vertue of Heireship Then to Benj: Beale And not to Jn<sup>d</sup> Patten, 1<sup>st</sup> that Jtt Doth belong to Ben. Beale as Heire Js Euidett for Wee haue Sufficiently proued y<sup>t</sup> he is y<sup>e</sup> Adopted Heire of the person Deceased for he Brought him ouer from England from his Friends, and Relations For that Very End And o<sup>r</sup> Lands by o<sup>r</sup> Law being Chatles goe nott by Right of Jnheritance but to whom A Man pleaseth to giue them, And that he Gaue the Estate to y<sup>e</sup> Said Beale and y<sup>t</sup> he is his Heire We haue sufficiently proued, 2dly That it Doth nott att all belong to the said John Patten is Euidett by the Resons Last Giuen Also by his possitiue Will. Vpon his Death bed From time to Time the Said patten Declared thatt the Pattens should not haue any partt of his Estate butt had Cheated him of Enough Already But the said Benjamin Beale should be Heire of all he had, & And y<sup>t</sup> he should be A knaue Jf he Did not Doe soe Well for him y<sup>e</sup> Said Beale as he had Done Jn giuing him his Estate

3. As To y<sup>e</sup> Assertion of y<sup>e</sup> Appell<sup>t</sup> Jn Taking vpon him to Jterprit o<sup>r</sup> Laws, J hope y<sup>e</sup> Hono<sup>d</sup> Courtt will Take notice of. and there plea to y<sup>e</sup> Law of England Js quite besides o<sup>r</sup> Byases & whatt o<sup>r</sup> Jury are Sworne to, who are to goe According to o<sup>r</sup> Law, & J question nott but they will mind and Attend too, Butt that y<sup>t</sup> they Assertt Jf there had ben A Will to bee seene of y<sup>e</sup> Deceaseds there had ben noe Need of Administration (We Doubt nott butt Jf y<sup>e</sup> Appellantt had ben Honest there had ben A sufficient Will seen before now to haue Cleared vp this Case Fully For he y<sup>e</sup> [Ap]<sup>l</sup> said that after his vnkell was Dead thatt itt should appeare thatt y<sup>e</sup> said Beale was Heire & executo<sup>r</sup> of all: And y<sup>t</sup> they should see itt Butt it was quicly Lost:) But Administration many times Js graunted where there is A will made: where p<sup>t</sup> of y<sup>e</sup> Estate is Left Outt, And Especially vpon Nuncupatiue Wills where a man hath an Estate graunted & giuen to him, he must haue some thing from Authority to shew by vertue of whatt Rightt he hould y<sup>e</sup> same And that the Courtt hath Acted According to Law Js plaine and Evidentt as y<sup>e</sup> Law Title Will Sec<sup>t</sup>: 3<sup>d</sup>: For y<sup>e</sup> County Courtt hath Pow<sup>r</sup> by Law To sett outt to the Widdow and other Heires if noe Children the Estate of y<sup>e</sup> Deceased persons, And y<sup>t</sup> Benj: Beale Is the Heire Wee haue sufficiently proued, And As to the Law one which he Grounds his Resons of Appeale vpon, Title Wills sec<sup>t</sup>: 2d: hath only Reference To Merch<sup>ts</sup> Seamen & other Straing<sup>rs</sup> Resorting hither Dying and Leauing there Estates vndisposed of Butt this p<sup>r</sup>son m<sup>r</sup> Nath<sup>l</sup> Patten Was Noe such p<sup>r</sup>son butt an Jnhabitantt here Att Dorchester & there Dyed and the Estate he Left is Disposed of According to Law as Wee haue before Cited, And Jf y<sup>e</sup> p<sup>l</sup> will haue y<sup>t</sup> to be Law w<sup>ch</sup> he Cites Title Wills sec<sup>t</sup>: 2<sup>d</sup>: he must stay while the Gen<sup>rl</sup> Courtt hath Altered itt As y<sup>e</sup> Court and Jury may se by y<sup>e</sup> p<sup>r</sup>face how it Runs & Whom it hath Relat: too One w<sup>ch</sup> the whole Law hangs & Depends & hath Relation too: And thus Hauing Sufficiently Proued Benj. Beale The Rightfull Heire to the Estate Wee Doubt Nott butt y<sup>e</sup> Hono<sup>d</sup> Courtt And Jury Will see Justt Cause To Confirme the form<sup>r</sup> Courtts Judg<sup>t</sup>



4: To His many Other Large p<sup>r</sup>tences they are nott Worth Answering, Only y<sup>e</sup> Law Title Conveyances itt hath Only Relation to Lands Sold nott to any gift by Will or otherwise as the Law. Sect: 2<sup>d</sup>. There Clearly Demonstrates, All Which Wee shall Leave To y<sup>e</sup> Hono<sup>d</sup>d Courtt and Jury To Judg off

Richard Way

The Court of Assistants (Records, i. 4), confirmed the former judgment. But the possession of the Patten estate was not yet finally settled. In October, 1674, the General Court ordered that the portion of Nathaniel Patten's estate, not assigned to his widow, be divided equally between Beal and Thomas Patten (Records of Massachusetts Bay, v. 23-24). In S. F. 1403.5 is a copy of articles of agreement between Beal and Patten in execution of this order. Later, the old dispute was renewed in the form of a suit between two other persons. See *Salter v. Checkley*, below, p. 579.]

Vsher ags<sup>t</sup> PHILLIPS

Iohn Vsher plaint. ags<sup>t</sup> Zachariah Phillips Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Decembr<sup>r</sup> 15<sup>th</sup> 1673. The plaint. withdrew his Accion.

NEWMAN ags<sup>t</sup> FRIZELL

Frederick Newman plaint. ags<sup>t</sup> Thomas Frizell Master of the ship S<sup>t</sup> Katharin Defend<sup>t</sup> in an accion of the case for the non paiment of Nineteen pounds in mony or thereabouts which is due for wages of worke & service done on board & belonging to the afores<sup>d</sup> Ship in the Emploim<sup>t</sup> of Masters Mate being shipped by the s<sup>d</sup> Master for three pounds sixteen shillings per month at London & then was bound for New-England & from thence to the Maderas but the Voyage is deserted therefore the plaint. sues for his wages & all other due damages according to Attachm<sup>t</sup> Dat. Ianuary 22<sup>th</sup> 1673. . . . The Iury . . . founde for the plaint. seventeen pounds in mony damage & costs of Court being £:1:12:2.

Execucion issued Ian<sup>r</sup>y 31<sup>b</sup> 73 for £:18:12:2 [ 190 ]

JOHNSON ags<sup>t</sup> FRIZELL

Iohn Iohnson plaint. ags<sup>t</sup> Thomas Frizell Commander of the Ship S<sup>t</sup> Katharin Defend<sup>t</sup> in an accion of the case for the non paiment of eight pounds in mony or thereabouts due for wages of worke & service done on board & belonging to the afores<sup>d</sup> Ship in the Emploiment of a Seaman being shipped by the s<sup>d</sup> Master for thirty



six shillings per month at London & then was bound for New England & from thence to the Maderas &<sup>a</sup> but the voiadge is deserted therefore the plaint. sues for his wages & all other due damages according to Attachm<sup>t</sup> Dat. Jan<sup>ry</sup> 22<sup>th</sup> 1673. . . . The Iury . . . founde for the plaint. eight pounds in mony damage & costs of Court being 27<sup>s</sup> 2<sup>d</sup>.

Execucion issued 31 Jan<sup>ry</sup> 1673 for £.9.7.2.

#### FRIZELL ags<sup>t</sup> DAVY

Thomas Frizell Command<sup>r</sup> of the ship S<sup>t</sup> Katharin plaint. ags<sup>t</sup> m<sup>r</sup> Humphry Davy Defend<sup>t</sup> in behalfe of himselfe & ships Company being Attourney to the s<sup>d</sup> Company in an accion of the case for non paiment of One hundred & sixty pounds or thereabouts in mony due for wages earned by worke & Service done upon & about the s<sup>d</sup> Ship The s<sup>d</sup> Frissell being ordered or consigned by the Freight<sup>rs</sup> or hirers of s<sup>d</sup> Ship in London to deliver theire goods or Cargo to s<sup>d</sup> m<sup>r</sup> Davy & attend his Orders for further proceedings in the voiadge; which hee haue accordingly done & m<sup>r</sup> Davy hath deserted any further voiadge to proceed upon & saith hee desires the Seamen or Ships Company may bee discharged from the ship but refuses to pay theire wages all which is first due to bee paide by the s<sup>d</sup> Davy who hath received the Effects as aboue & all other due damages according to Attachm<sup>t</sup> Dat: January 22<sup>th</sup> 1673. . . . The Iury . . . founde for the Defend<sup>t</sup> costs of Court.

#### SMITH ags<sup>t</sup> HUDSON

Quart<sup>r</sup> Master Iohn Smith plaint. ags<sup>t</sup> Capt William Hudson Defend<sup>t</sup> in an accion of debt to the value of sixty & three pounds & ten shillings due for malt sold unto him & delivered at severall times to have been paide in silver as by booke & other testimony will plainly appear with all other due damages according to Attachm<sup>t</sup> Dat Jan<sup>ry</sup> 22<sup>th</sup> 1673. . . . The Iury . . . founde for the plaint. sixty three pounds ten shillings in mony & costs of Court. £:3:13:10  
[ 191 ]

#### DUDSON &<sup>a</sup> ags<sup>t</sup> DARVALL

Ioseph Dudson Rich<sup>d</sup> Wharton & Iohn Faireweather plaint<sup>s</sup> against William Darvall Defend<sup>t</sup> in an accion of the case for unjust

molestacion & high defamation in that the s<sup>d</sup> Darvall under colour of Law & countenance of Authority by a warrant fraudulently obtained hath caused the Constable forcibly to breake open & enter into sundry Warehouses in their occupacion & seized upon severall parcells of goods in their possession putting the Kings marke upon the s<sup>d</sup> goods upon false pretences & affirmations that the same were stoln out of his Warehouse whereby the s<sup>d</sup> goods have been restrained & damnified & their names & persons highly defamed with other due damages according to Attachm<sup>t</sup> Dat. Ian<sup>ry</sup> 22<sup>th</sup> 1673. . . . The Iury . . . founde for the Defend<sup>t</sup> costs of Court. The plaint. m<sup>r</sup> Richard Wharton in behalfe of himselfe & others mentioned in the process appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Rich<sup>d</sup> Wharton as principall in ten pounds & Anthony Checkly & Nicholas Page as sureties in five pounds apeice acknowledged themselves respectiuey bound to . . . prosecute his Appeal . . .

[The only document preserved for this case, which was closely connected with Darvall v. Dudson (above, p. 364), is the following (S. F. 1279.1):

Joseph Dudson, Richard Wharton, & John Fayreweather their Reasons of appeal from the judgem<sup>t</sup> of the County Court held at Boston — Jan. 27. 1673. In an action of the Case ag<sup>t</sup> William Darvall Defend<sup>t</sup> — —

1. It hath been plentifully proved, & owned y<sup>t</sup> y<sup>e</sup> Goods y<sup>t</sup> m<sup>r</sup> Darvall pretended to be stolne from him, were taken out of his warehouse, at New Yorke, by the Dutch upon their Conquest of y<sup>t</sup> place, & y<sup>t</sup> those y<sup>t</sup> Seized them were so farr from Looking upon themselves to be thieves, that they carryed them to the weigh house, The Common & publique place to Enter and Take notice of Goods Shipd of (as by Testimony produced by m<sup>r</sup> Darvall may appear). And it is a high reflexion upon his majesty who hath with all usuall Solemnity publicly Declared war ag<sup>t</sup> the States of Holland & their Subjects: also it is a great affront to the Authority of this Jurisdiction who have with like due Solemnity proclaimed y<sup>e</sup> Declaration of warr: To pretend y<sup>t</sup> Goods taken on either side in such a Lawfull warr were stolne, thereby insinuating, if not Expressly declaring y<sup>t</sup> his majesty's Declaration of warr & this Colonies proclamation Thereof were both unlawfull, & y<sup>t</sup> all Such either English or Dutch as made any Seizure of the others Estate in prosecution of said warr, were Thieves.

2. As y<sup>e</sup> said Darvall hath herein both reflected upon his majesty & his authority here established, So hath he notoriously abused, y<sup>e</sup> magistrate from w<sup>m</sup> he obtained y<sup>e</sup> warrant; In declaring to him, his warehouse was broke open, & Goods Stolne out & Desiring warrant for Search, neither declaring, time when, place where, nor w<sup>t</sup> Goods were Stolne: For it cannot be Jmagine<sup>d</sup> y<sup>t</sup> when a person y<sup>t</sup> is Knowne to be resident under any Governm<sup>t</sup>, & Jmplies a warehouse & Deals in Sundry Goods shall Come with such a restrayned or false Com-

plaint & Information to the magistrate as m<sup>r</sup> Darvall did, y<sup>t</sup> y<sup>e</sup> magistrate should think or Conceive y<sup>t</sup> y<sup>e</sup> warehouse pretended to be broken open was in another Countrey & under another Governm<sup>t</sup>, & y<sup>t</sup> y<sup>e</sup> Goods pretended to be Stolne were Seized upon by an Enemy in prosecution of a proclaimed & Lawfull warr—

3. As the s<sup>d</sup> Darvall hath herein reflected upon his Majesty & his Authority here Established & abused the Magistrate as afores<sup>d</sup>, So hath he perverted justice & the Law in prosecution of his s<sup>d</sup> warrant so fraudulently obtained in falsely pretending robbery & Damage to molest Vex & Defame the Appellants & in Causing the Constable to breake open & rife their warehouses, as if they had been notorious Thieves & robbers, seizing upon their proper Goods & others in their Lawfull possession, & putting the King & Countrey's marke, upon the same, causing a false & partiall Inventory thereof to be taken & returned, & indeav<sup>r</sup>ing Contrary to Law Title Burglary & Theft. Sect. 3<sup>d</sup> latt<sup>r</sup> part — to gett the Same into his possession & refusing to charge or prosecute any person for the falsely pretended Theft, & prompting & putting the Constable upon the Transgression of his warr<sup>t</sup> — promising to save him harmless in all y<sup>t</sup> he directed him to, whereby the s<sup>d</sup> Darvall, & by his actual assistance, hath made the Constables act his owne, as much as any vexatious or groundless arrest laid by the marshall is the plaintiffs: notwithstanding m<sup>r</sup> Hodges's Learned plea to the Contrary, to make the Constable the Trespasser or person injurious herein.

4. For y<sup>t</sup> y<sup>e</sup> Appellants have been unjustly molested & Damnified, there Goods Seized upon in a Scandalous manner, & restrayned & their persons & Creditts Defamed & Disparaged & yet no manner of Satisfaction or reparation adjudged to them, all w<sup>ch</sup> The Appell<sup>ts</sup> humbly Leave to the Judicious Consideration of the Hon<sup>rd</sup> Court & Jury, not doubting but y<sup>t</sup> regard will be had to y<sup>t</sup> first & fundamentall Law in o<sup>r</sup> Lawbooke w<sup>ch</sup> prohibits such Jnjuryes as the Appellants Complayne of, & provides for their redress & Remedy And y<sup>t</sup> according to y<sup>t</sup> Condition they live in, & that Credit & Correspondence they have in the world, Such Verdict & judgem<sup>t</sup> will be given as may repayr their damage & discreditt, & Support their reputations: & for y<sup>e</sup> future discouragement, & prevent Such Jndirect, unlawfull, & pernicious practices.

Joseph Dudson  
Richd Wharton  
John fayerweather.

These Reasons were received February 26<sup>th</sup> 1673. per Js<sup>a</sup> Addington Cler

The appellants failed to appear at the Court of Assistants when the action was called, and were non-suited. Records of the Court of Assistants, i. 5.]

#### BOSWORTH ags<sup>t</sup> GIBBS

Nathaniell Bosworth of Hull sen<sup>r</sup> plaint. ags<sup>t</sup> Benj<sup>n</sup> Gibbs Defend<sup>t</sup> in an accion of the case for non paiement of twenty eight pounds twelve shillings or thereabouts, due for Eighty eight quentalls of Bass Fish sold him the s<sup>d</sup> Gibbs by the s<sup>d</sup> Bosworth in the behalfe of himselfe & Company being greatly to the damage of the plaint. & all other due damages according to Attachm<sup>t</sup> Dat: 19<sup>th</sup> of January 1673. . . .

The Jury . . . founde for the plaint. debt & damage Fifty six shillings in good & merchantable English goods at price current & costs of Court being 2<sup>li</sup> 12<sup>s</sup> 10<sup>d</sup>

HEARSEE ags<sup>t</sup> DAVENPORT

John Hearsee of Hingham plaint. ags<sup>t</sup> Cap<sup>t</sup> Nathaniell Davenport Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat 23<sup>th</sup> of Decemb<sup>r</sup> 1673. The plaint. was non suited upon non appearance. [201<sup>1</sup>]

SKINNER ags<sup>t</sup> LOWELL

Thomas Skinner plaint. ags<sup>t</sup> Ioseph Lowell Defend<sup>t</sup> in an accion of the case for setting up a Fence in a passadge way that is under the dwelling house of the s<sup>d</sup> Lowell w<sup>ch</sup> hinders the free passage of the s<sup>d</sup> Skinner to his house which free passadage the s<sup>d</sup> Lowell sold the priviledge of to Iohn Glover as will appeare by a Deed under the saide Lowells hand & seal & doth now of right belong to the s<sup>d</sup> Skinner who hath purchased it of the s<sup>d</sup> Glover being greatly & continually to the damage of the plaint. & all other due damages according to Attachm<sup>t</sup> Dat. January 22<sup>th</sup> 1673. . . . The Iury . . . founde for the plaint. that the s<sup>d</sup> Lowell within the space of three dayes remove the fence now in controversy from damnifying the s<sup>d</sup> Skinner soe far as the jet of Ioseph Lowells house extendeth & in default thereof to pay twenty pounds in mony within the space afores<sup>d</sup> & costs of Court. The Defend<sup>t</sup> appealed from the judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Ioseph Lowell as principall in Forty pounds & In<sup>o</sup> Lowell & Ioseph Webb as Sureties in 20<sup>li</sup> apeice acknowledged themselves respectively bound to . . . prosecute his appeal . . .

[The deed on which Skinner's action is grounded (S. F. 1273.6) is printed as a sample of that type of document. In S. F. 1273.7 is a copy of the deed from Lowell to Glover, dated 6 January 1672, of the same property, with a similar provision for "free Liberty of passage" under the Lowell house.

(S. F. 1273.6)

Know all Christian People to whome this pu<sup>r</sup>sent writing shall come Iohn Glover of Boston in the County of Suffolke in New-England sendeth greeting Know Ye that the sd. Iohn Glover for and in consideracion of the summe of Sixty

<sup>1</sup> Gap in pagination here, although no pages of the manuscript are missing.



six pounds of lawfull mony of New-England to mee in hand before the Ensealing and delivery of these pu'sents by Thomas Skinner of the aforesd. Boston white bread baker well & truly paide the receipt whereof I doe hereby acknowledge my selfe therewith fully Satisfied & contented & thereof & of eu'y part thereof doe hereby acquit & discharge the sd. Thomas Skinner his heires Executo<sup>rs</sup> & Administrato<sup>rs</sup> for ever by these pu'sents. Have given granted bargained sold aliened Enfeoffed & confirmed & by these pu'sents doe fully cleerely & absolutely give grant bargain Sell alien Enfeoffe & confirm unto the sd. Thomas Skinner all that my house & land scituate lying & being neere the Exchange in Boston aforesaide being buttled and bounded Westerly with a lane that runs from the head of the great dock in Boston to m<sup>r</sup> Sammuell Shrimptons house & extending itselfe in the front on the sd. west side thirteen foote & eleven inches Southerly & Easterly by the land of Sammuell Plummer & Northerly by the land of Ioseph Lowell being in length from the front to the reare Sixty foote or thereabouts & in breadth in the reare twelve foote & a halfe or thereabouts extending from the Southeast corner of Ioseph Lowells house to the sd. Plummers as also a free liberty of a passage with wood or other goods through the Entry or passage that is under & belongs to the dwelling house of Ioseph Lowell Together with all profits privileges & appurtenances to the same belonging or in any wise appertaining or thence to bee had made or raised & also all Deeds writings & Evidences whatsoever touching & concerning the same To have & to hold the sd. house & land with all and eu'y the rights members and appurtenances unto the sd. Thomas Skinner his heires Executo<sup>rs</sup> & Administrato<sup>rs</sup> & to his & their owne sole & proper use & behoof for ever And I the sd. Iohn Glover doe for myselfe my heires Executo<sup>rs</sup> administrato<sup>rs</sup> & assignes Covenant promiss & grant by these pu'sents that at the time of the then Sealing & delivery of these pu'sents I am the true sole & lawfull Owner of all the aforebargained pu'misses & am lawfully Seized of & in the same & eu'y part thereof in my own proper right & that I haue in my selfe full power good right & lawfull Authority to grant Sell & convey & assure the same unto the sd. Thomas Skinner his heires Executo<sup>rs</sup> & Administrato<sup>rs</sup> as a good perfect and absolute Estate of inheritance in fee simple without any condition reversion or limitation whatsoever soe as to alter change defeate make voide the same And that the sd. Thomas Skinner his heires Executo<sup>rs</sup> Administrato<sup>rs</sup> & assignes shall & may by force & vertue of these pu'sents from time to time & at all times for ever heereafter lawfully peaceably & quietly haue hold use Occupy possess & enjoy the abouegranted pu'misses with the appurtenances without any lett lawfull Suite trouble denyall interruption or disturbance of mee the sd. Iohn Glover my heires Executo<sup>rs</sup> & administrato<sup>rs</sup> or assignes or of any other person or persons whatsoever lawfully claiming by from or under us or any of us or by o<sup>r</sup> or any of o<sup>r</sup> meanes act consent title or procurement And I the saide Iohn Glover for mee my heires Executo<sup>rs</sup> Administrato<sup>rs</sup> & assignes & eu'y of us further Covenant promiss & grant that the sd. house & land with all the rights privileges & appurtenances by these pu'sents mentioned to bee granted & sold on the day of the date hereof & from time to time & at all times for ever hereafter shalbee and remaine unto the onely proper use & behoofe of the sd. Thomas Skinner his heires & assignes for ever free & cleere & freely and cleerely acquitted exonerated & discharged or otherwise well and sufficiently saved & kept harmeless & indemnified by mee the saide Iohn Glover my heires Executo<sup>rs</sup> & Administrato<sup>rs</sup> of & from all & all manner of former gifts grants bargains Sales leases Mortgages

jointures dowers titles of Dower judgments Extents Execucions Entailes forfeitures & of & from all other titles troubles & incumbrances whatsoever And I the sd. Iohn Glover my heires Executo<sup>rs</sup> Administrato<sup>rs</sup> & assignes shall & will at all times upon the reasonable request of the sd. Thomas Skinner his heires or assignes bee ready & willing to give & will giue to the sd. Thomas Skinner his heires Executo<sup>rs</sup> & Administrato<sup>rs</sup> & assignes such farther & ample assurance of all the aforebargained pu<sup>r</sup>misses as in law or equity can bee desired or required And lastly that the afores<sup>d</sup> bargained pu<sup>r</sup>misses & eu<sup>r</sup>y part thereof shalbee & bee construed & Esteemed & taken to bee the onely proper use & behoofe of the sd. Thomas Skinner his heires Executo<sup>rs</sup> administrato<sup>rs</sup> & assignes for ever & to noe other use intent or purpose whatsoever. Jn Witness whereof the sd. Iohn Glover hath hereunto set his hand & Seal this eleventh day of Iuly in the yeare of o<sup>r</sup> Lord One thousand six hundred Seventy three Annoque Regni Regis Car Secundi xxv.

John Glover & a Seal

Signed Sealed & Delivered in pu<sup>r</sup>sence of  
his

Thomas T P Peck  
marke

Sammuell Plummer  
Jn<sup>o</sup> Williams

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

In the following Reasons of Appeal by Lowell (S. F. 1273.3), the references to "the law" or "our law" are to The General Laws and Liberties of the Massachusetts Colony, 1672.

Joseph Lowle his reasons of Appeall from the judgment of the last County Court held in Boston Jan 27<sup>th</sup> 167<sup>4</sup> in which action He was Defendent & Thomas Skinner Plaintiff

Thomas Skinner sueth mee yo<sup>r</sup> Appellant as may appear by attachment for setting up a fence in a passage way that is und[er] my now Dwelling house as the then Plaintiff Sayth, which first clause J take to be the very hing of o<sup>r</sup> action on which the latter hath it's Dependance, and this as J humbly conceive the then Plaintiff hath not proved, unless a bare specifying the case in attachment be a sufficient proof of the thing sued for, and if such practices may be accounted legall J see not that either mine or other mens estates can be secured to them but that litigious persons by this means may have an Dore to all manner of contention finding out such easy ways to procure their Desires & therefore J appealed

2 J am judged to remove a fence within three Days or pay twenty pounds in mony when there is neither proof so much as there is a fence much less that ever J sate vp any fence in a passage way under mine house either by myself or my procurement and the law title jurors requires that all Jurors impannelled & sworn shall truely try betwixt party & party and shall find the matter of fact with the Dammages & costs according to their evidence & o<sup>r</sup> law title Appeal Sect. 3. sayth in all cases of appeall the Court Appealed to shall judg the case according to former Evidence and no other rectifying what is amiss therein, so that J hope this Hon<sup>ed</sup> Court & Jury will see cause to reverse the former Judgment

3 As to the other part viz. Hindering free passage to his house he striveth to

prove, or rather Dreamed hee had proved by the two Deeds put into the Court the only Evidences on record in this case, although there is not any such clause, or expression of passage to his house he bought of John Glover much less to any new building hee hath now lately erected, and in answer to which J yo<sup>r</sup> Appellant was ready to prove by two honest witnesses that said skinner had that passage sold by mee and specified in the Deed to John Glover always open & free, but the last Jury being so quicksighted it seemeth wanted no witness to cast mee wherefore I appealed as for his bill of costs it seemeth strang to mee that he should have two witnesses attendance allowed to him when as there is none sworn. so being Desireous to stand or fall by evidence J committ my case to this Hon<sup>d</sup> Court & jury praying for yo<sup>r</sup> prosperity in Truth & righteousness subscribing my self Yo<sup>r</sup> hon<sup>rs</sup> humble Appellant

Joseph Lowle.

S. F. 1273.4

Thomas Skinner His Answe<sup>r</sup> To Joseph Lowles Resons of Appeale.

Imp<sup>rs</sup> To his first wherin he saith I Sue for A passage or setting vp a fence In a Passage way that is vnd<sup>r</sup> his now Dwelling house. w<sup>ch</sup> he Judges I haue nott proued & c<sup>t</sup> I haue sufficiently proued y<sup>e</sup> Same by more then: 12: Wittnesses who were the Last Jury and had nott they veiwed it, two Wittnesses had sworne to y<sup>e</sup> thing butt y<sup>t</sup> was To p<sup>r</sup>ventt Cross Oathes, And To his p<sup>r</sup>tence y<sup>t</sup> Jf such Practises should be Suffered he Knoweth nott how his and other mens Estates wold secured: he may Justly Turn that vpon himselfe. For most men y<sup>t</sup> see y<sup>e</sup> Jnjury that he Doth to me in this Action of his Cry outt. shame of him; and Jf A Legall Deed of sale be nott A Right sufficientt in Law to Defend me in My Right J know nott how my Estate w<sup>th</sup> other mens will be secured:

2<sup>d</sup> To His: 2<sup>d</sup>: Whereas he saith he is Judged to Remoue A fence Within three Dayes. The p<sup>lt</sup> Is very much Mistaken In the Judgmentt, y<sup>e</sup> Judg<sup>t</sup> is nott for to Remoue A fence but the fence for y<sup>e</sup> Word A & the in this Case is very much Different one from An Other: And whereas he saith thatt it is nott so much as any Prooffe, there is A fence much Less y<sup>t</sup> he sett it vp: 1<sup>st</sup> I Answe<sup>r</sup> that had there ben Noe fence, there had ben noe Trouble, 2dly had there ben Noe fence why should the p<sup>lt</sup> haue putt the Country to soe Much Trouble & himselfe & y<sup>e</sup> Def<sup>t</sup> to soe Much Charge To Appeale. had there ben Noe fence there had ben no Cause of Appealing from y<sup>e</sup> sentance of y<sup>e</sup> Last Hono<sup>d</sup> Court 3dly wheras he saith that Juro<sup>rs</sup> are To try y<sup>e</sup> Case According To Euidence, w<sup>ch</sup> the Defend<sup>t</sup> Desires they may only try the Case by y<sup>e</sup> same Euidence y<sup>e</sup> Last Jury Att the County Courtt had which was the Sightt of the Thing sued for w<sup>ch</sup> the Last Hon<sup>d</sup> County Courtt see Cause To Desire the Jury to Goe Down & Veiw the thing to p<sup>r</sup>ventt Cross Oaths, w<sup>ch</sup> he y<sup>e</sup> Appellant would haue Brought Jn to haue blinded the Courtt and Jury and Justise wold haue ben p<sup>r</sup>vented And the then p<sup>lt</sup> Extremely Wronged; And Jtt is the Desire of y<sup>e</sup> Now Def<sup>t</sup> that the Hono<sup>d</sup> Courtt Wold Desire this Jury to goe Down & veiw y<sup>e</sup> same Again And then J question nott but they will see how J am Wronged by y<sup>e</sup> Appell<sup>t</sup> And Rather Augm<sup>t</sup> then Deminish the Former Juries verdict:

3. To his 3<sup>d</sup> p<sup>r</sup>tended Reson wherein he saith J Rather Dreamed then proued that he had hindred me of my free passage in y<sup>e</sup> Entry to my house by y<sup>e</sup> Deeds put into y<sup>e</sup> Courtt, now As to y<sup>e</sup> Deedes Jf y<sup>e</sup> Hon<sup>d</sup> Courtt and Jury will be pleased Well to Veiw them they Express in these Words viz: With the free Liberty of A



passage w<sup>th</sup> Wood and other Goodes. throw the Entry that is vnd<sup>r</sup> & belongs to y<sup>e</sup> said Lowells House to y<sup>e</sup> said Glou<sup>r</sup>s Land with all y<sup>e</sup> Liberties priueledges and Appurtenances To y<sup>e</sup> same belonging or Appertaining, and there in y<sup>e</sup> very Entry & passage way y<sup>e</sup> p<sup>lt</sup> hath sett vp this Fence, now in Controu<sup>rsy</sup> so y<sup>t</sup> y<sup>e</sup> Def<sup>t</sup> Cannott Come to his Land (or House) and if he hath Free Liberty to Come to his Land then sure he hath a Liberty to Come to y<sup>e</sup> House he built vpon y<sup>e</sup> Land Except he had injoynd the p<sup>r</sup>son he sould it too neu<sup>r</sup> to haue built vpon it And Whereas he Saith he Was Ready To proue that the passage he Sould To John Glouer, & y<sup>t</sup> J Boughtt was open and free, and iff the Wittnesses had Sworne to Such a thing they Would haue ben Little Better then perjured, When there would haue been two Honestt Men Would haue firstt sworne the quite Contrary and the thing is still Evidentt quite Contrary to whatt they wold haue sworne Too; Which was the Only Cause why y<sup>e</sup> Hono<sup>d</sup> County Courtt Refused To take Either of them And soe Caused the Jury to goe and veiw The place. Which y<sup>e</sup> Defend<sup>t</sup> still Craues this Hon<sup>d</sup> Courtt wold Desire the Jury soe to Doe, And To The Bill of Cost itt is Justt and Legall according to Law And Custome Soe Desiring Thatt Nothing butt truth Righteousness and Justise may Take place The Defend<sup>t</sup> Doubts Nott butt this Hon<sup>d</sup> Courtt & Gentlemen of the Jury Will see Just Cause to Confirme the former Courtts Judgmentt Leauing my Honest Just and Righteous Cause with them Subscribing my Selve As Jn Duty Bound:  
Yo<sup>r</sup> Seruantt:

Thomas Skinner

[Endorsed:] Tho. Skinne<sup>r</sup> Answ<sup>r</sup> To Joseph Louell Resons of Appe<sup>l</sup>

Skinner's bill of costs is in S. F. 1273.5. The appeal was heard by the Court of Assistants (Records, i. 3) and the former judgment confirmed.]

#### BAKER ags<sup>t</sup> JOHNSON

Nathaniell Baker of Hingham plaint. ags<sup>t</sup> Humphry Iohnson of Hingham Defend<sup>t</sup> in an accion of the case to the value of twenty pounds in mony for that the saide Humphry Iohnson refuseth to signe & seal a Legall conveyance according to his promiss unto the s<sup>d</sup> Nathaniell Baker before witness referring to a certain tract of Land lying in the second division of Conahasset upland in hingham it being the forty fourth Lot of the saide division; which s<sup>d</sup> tract of land the s<sup>d</sup> Nathaniell Baker formerly bought of the s<sup>d</sup> Humphry Iohnson & also made full paim<sup>t</sup> for the s<sup>d</sup> Lot to the s<sup>d</sup> Iohnsons content with all due damages according to Attachm<sup>t</sup> Dat: Ianuary 20<sup>th</sup> 1673. . . . The Iury . . . founde for the plaint. that the s<sup>d</sup> Humphry Iohnson doe signe seal & deliver to the s<sup>d</sup> Nathan<sup>li</sup> Baker a suffittient deed according to law of the land sued for or to pay the s<sup>d</sup> Baker twenty pounds in mony within 4 dayes next Ensuing & costs of Court being 3<sup>li</sup> 19<sup>s</sup> 2<sup>d</sup>

Execucion issued Feb<sup>ry</sup> 6 1673 for 20<sup>li</sup> m<sup>o</sup> & 3<sup>li</sup> 19 2<sup>d</sup> costs. [202]



BRATTLE ags<sup>t</sup> KNIGHT

Thomas Brattle Attourney to Iohn Cutt Merchant of Portsmouth plaint. ags<sup>t</sup> Richard Knight Shopkeeper Defend<sup>t</sup> in an accion of the case for violent breaking open the lock of a Sellar dore belonging to the s<sup>d</sup> Brattle wherein wines of the s<sup>d</sup> Iohn Cutt his lay & going into the s<sup>d</sup> Sellar & taking from thence one pipe of Madera wine belonging to the s<sup>d</sup> Cutts & carrying it away from thence & marking seven or eight pipes more of the s<sup>d</sup> Cutt his wine with the broad arrow hindering them from being put to Sale to the great damage of the s<sup>d</sup> Cutt which is contrary to Law & an agreement made with the s<sup>d</sup> Brattle about the customes of the s<sup>d</sup> wines as by a certificate will more fully appeare & all due damages according to Attachm<sup>t</sup> Dat: Ianuary 22<sup>th</sup> 1673. . . . The Iury . . . founde for the plaint. that the s<sup>d</sup> Knight resigne up all the wines of the s<sup>d</sup> Cutts that is now sued for & under restraint or seized by the s<sup>d</sup> Knight & return the pipe of wine that the s<sup>d</sup> Knight tooke away in as good state as the s<sup>d</sup> Defend<sup>t</sup> founde it or instead of this s<sup>d</sup> pipe of wine pay eleven pounds in mony & costs of Court. The Defend<sup>t</sup> appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Rich<sup>d</sup> Knight as principall in two hundred pounds & Nicholas Page & Ioseph Dudson as Sureties in 100<sup>li</sup> apeice acknowledged themselves respectively bound to . . . prosecute his Appeal . . .

BRATTLE ags<sup>t</sup> CROSBY

Thomas Brattle plaint. ags<sup>t</sup> Ioseph Crosby Defend<sup>t</sup> in an accion of reveiw of an accion of debt for the summe of seven pounds nine shillings being the remainder of a bill of thirty two pounds Eighteen shillings paiable to the s<sup>d</sup> Brattle for the use of m<sup>r</sup> Sammuell Bradstreet with interest & due damages according to Attachm<sup>t</sup> Dat. Ian<sup>ry</sup> 17<sup>th</sup> 1673. . . . The Iury . . . founde for the plaint. seven pounds nine shillings in mony & costs of Court.

IOY ags<sup>t</sup> BAKER

Thomas Ioy of Hingham plaint. ags<sup>t</sup> Nathaniell Baker of Hingham in an accion of the case to the value of three pounds seven shillings & six pence or thereabout which the s<sup>d</sup> Baker received some yeares since of Cap<sup>t</sup> Iames Iohnson of Boston glover on the account of the s<sup>d</sup> Tho: Ioy as appear by the s<sup>d</sup> Iohnsons booke [ 203 ] & all due

damages according to Attachm<sup>t</sup> Dat. January 22<sup>th</sup> 1673. The Accion being called both plaint. & Defend<sup>t</sup> appeared & the Attachm<sup>t</sup> being read, the plaint. was required to prosecute his cause, who produceing noe Evidence but a blotted booke which hee s<sup>d</sup> was Cap<sup>t</sup> Iohnsons but had noe witness to the booke or any acco<sup>t</sup> in it upon which the Magistrates refused it & the case was committed to the Iury who . . . founde for the Defend<sup>t</sup> costs of Court, being thirty one shillings ten pence.

Execucion issued Feb<sup>ry</sup> 6 1673

JOY ags<sup>t</sup> HAMBLETON

Thomas Ioy plaint. ags<sup>t</sup> William Hambleton Defend<sup>t</sup> The plaint. in failer of his process was nonsuited. the s<sup>d</sup> Hambleton being dead before the tryall.

ROCK ags<sup>t</sup> CLARKE

Ioseph Rock administrato<sup>r</sup> to the Estate sometime of Iohn Coggan & Martha Coggan deceased & guardian to Caleb Coggan the onely son & heire of the s<sup>d</sup> Iohn & Martha Coggan in his non age deceased plaint. ags<sup>t</sup> L<sup>t</sup> Thomas Clarke Defend<sup>t</sup> in an accion of the case for nonpaiment of thirty pounds or thereabouts remaining due for rent of the house & roomes shop & yard where the s<sup>d</sup> Clarke now dwelleth in Boston according to a Lease or Indenture under the hand & seal of the saide Clarke bearing date the first day of August 1663 of which s<sup>d</sup> rent remaines of the mony part of the two Last yeares rent fifteen pounds mony & then the remaind<sup>r</sup> of the aboues<sup>d</sup> rent due is to bee paide the one halfe in provitions & the other halfe in shop goods: all which will agree for substance according to the abouesaide Indenture with all other due damages according to Attachm<sup>t</sup> Dat: January 19<sup>th</sup> 1673. The Accion being cald both plaint. & Defend<sup>t</sup> appeared & the Attachm<sup>t</sup> being read The Defend<sup>t</sup> made Objection ags<sup>t</sup> the process for that the plaint. had noe power of Administracion: the plaint. failing in his process for want of prooffe thereof the Court declared him non suited. The plaint. appealed from this judgm<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Ioseph Rock as principall in ten pounds & Paul Batt & Iohn Wally as sureties in five pounds apeice acknowledged themselves respectively bound to . . . prosecute his Appeal . . .

[See Index, under Joseph Rock, and Records of the Court of Assistants, i. 4.]

CHECKLY ags<sup>t</sup> CLARKE

Anthony Checkly Attourney of Theoder Atkinson sen<sup>r</sup> in the behalfe of his daughter Abigail Atkinson plaint. [204] against L<sup>t</sup> Thomas Clarke Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. January 22<sup>th</sup> 1673. The plaint. withdrew his accion.

SUTTON ags<sup>t</sup> IUDKIN

Iohn Sutton plaint. ags<sup>t</sup> Sammuell Judkin Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: 9<sup>br</sup> 29 1673. The plaint. withdrew his accion.

BENDALL Attourney to EDW: TYNG Esq<sup>r</sup> ags<sup>t</sup> WILMOT

FreeGrace Bendall Attourney unto Edward Tyng Esq<sup>r</sup> Treasuro<sup>r</sup> of the County of Suffolke plaint. ags<sup>t</sup> Nicholas Wilmot Defend<sup>t</sup> in an accion of the case for the forfeiture of a bond of ten pounds declared forfeited at the last County Court held at Boston upon his non appearance there according to bond & all other due damages according to Attachm<sup>t</sup> Dat. X<sup>br</sup> 31: 1673. . . . The Iury . . . founde for the plaint. the forfeiture of the s<sup>d</sup> Wilmots bond being ten pounds & costs of Court.

BENDALL Attourney to EDW: TYNG Esq<sup>r</sup> ags<sup>t</sup> BRADLY

Free Grace Bendall Attourney unto Edward Tyng Esq<sup>r</sup> Treasuro<sup>r</sup> of the County of Suffolke plaint. ags<sup>t</sup> Richard Bradly Defend<sup>t</sup> in an accion of the case for the forfeiture of a bond of twenty pounds declared forfeited at the last County Court held at Boston upon his non appearance there according to bond with all other due damages according to Attachm<sup>t</sup> Dat: X<sup>br</sup> 31: 1673. . . . The Iury . . . brought in there verdict & founde for the plaint. the forfeiture of s<sup>d</sup> Bradly's bond being twenty pounds & costs of Court. The Court respites Execucion in this & the accion aboue till next Court of this County.

GIBBS Fin<sup>d</sup> 3<sup>li</sup>

Benjamin Gibbs being formerly complained of the County Court held at Boston upon adjournm<sup>t</sup> 9<sup>br</sup> 6 1673 by Henry Ashton for his illegall & violent actings towards him the s<sup>d</sup> Ashton as by his complaint then exhibited to the Court & s<sup>d</sup> Gibbs being called to answer

for the same claimed the benefit of the Law to bee tried by a Iury; which was granted him, but the Iury for that Court being then discharged The Court ordered him s<sup>d</sup> Gibbs to give in bond to answer at this Court; which hee accordingly attended & being now called & the s<sup>d</sup> Ashtons complaint & Evidences in the case by both parties produced being read committed to the Iury & remaine on file with the Records of this Court. . . . The Iury . . . founde the fact that hee the s<sup>d</sup> Gibbs did violently & illegally act towards the s<sup>d</sup> Ashton hee the s<sup>d</sup> Ashton not being und<sup>r</sup> a legall arrest. [205] The Court on consideracion of the same Sentenc<sup>d</sup> him the s<sup>d</sup> Gibbs to pay three pounds in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed. The s<sup>d</sup> Benj<sup>n</sup> Gibbs appealed from the Sentence of this Court to the next Court of Assistants & hee the s<sup>d</sup> Gibbs as principall in six pounds & Sammuell Walker & Samm: Mosely as sureties in three pounds apeice acknowledged themselves respectively bound to . . . prosecute his Appeal . . . & that in the meane time hee should be of good behavio<sup>r</sup>.

#### Grandjury men Fin<sup>d</sup>

Ioshua Atwater Iohn Weld & Edward Morrice not appearing to serve on the Grandjury when called according to Summons were fined thirteen shillings & four pence apeice in mony to the County. Iohn Weld & Edw<sup>d</sup> Morrice afterwards appearing & making their excuse The Court remitted their fines.

#### SMITH to MORSE

Thomas Smith of Charlstown personally appeared in Court Ian<sup>ry</sup> 27<sup>th</sup> 1673 & acknowledged a judgm<sup>t</sup> against himselfe & Estate for three pounds one shilling and sixpence in mony to Daniell Morse sen<sup>r</sup> of Medfeilde.

Execucion issued Feb<sup>ry</sup> 24<sup>th</sup> 167<sup>3</sup>/<sub>4</sub>

#### IN<sup>o</sup> LEVERETT Esq<sup>r</sup> discharged from adm<sup>r</sup>

The Hono<sup>rd</sup> Gov<sup>r</sup> John Leverett Esq<sup>r</sup> presenting an Account (to this Court) of his Administracion to the Estate of Iohn Cullick deceased. The Court accepted thereof & discharged him from the s<sup>d</sup> Administracion.



GLOV<sup>rs</sup> Guardian

Iohn Glover sonn of Nathaniell Glover deceased appeared in Court & made choise of m<sup>r</sup> Anthony Checkly for his guardian; which hee accepted & the Court allowed of: The s<sup>d</sup> Guardian having given in Security for the faithfull performance of his trust according to Law.

## Grandjury dismiss

The Grandjury brought in theire bill of presentment Ian<sup>ry</sup> 28<sup>th</sup> 1673 & were dismissed for this Court.

## PHILLIPS to VSHER

Zechariah Phillips personally appeared in Court January 29<sup>th</sup> 1673 & acknowledged a judgment against himselfe and Estate to Iohn Vsher for thirty pounds in mony.

## Freeman Sworn

Nathaniell Brewer of Roxberry tooke the Oath of freedom of this Colony.

## Dorchester under a pœnalty

The Town of Dorchester being presented for the insufficiency of a highway neere the end of the land by [ 206 ] Richard Withringtons house The Court Orders the saide Town suffitiently to repaire the s<sup>d</sup> highway by the next Court of this County und<sup>r</sup> the penalty of five pounds to bee forfeited to the County

## Order about Manaticot bridge continued

The Court continues the Order passed the Last County Court to the Town of Brantery concerning the building of the bridge over Manaticott River untill the next Court of this County & Order that it bee fulfilled by that time under the pœnalty expressed in theire former Ord<sup>r</sup>

## Milton under a pœnalty

The Town of Milton being presented by the Grandjury for the insufficiency of a highway by Robert Redmans Orchard Anthony Gulliv<sup>r</sup> appearing in the Towns behalfe made answer it was in part mended: The Court Orders the saide Town suffitiently to repaire the s<sup>d</sup> highway by the next Court of this County under the pœnalty of five pounds.

Cap<sup>t</sup> HUDSON Admonish't

Cap<sup>t</sup> William Hudson being presented by the Grandjury for suffering of severall persons to continue in his house upon the Lords days at night drincking contrary to that Law mentioned page 132 of which hee was convict by the testimony of Cap<sup>t</sup> Edw: Hutchinson Commission<sup>r</sup> & Christoph<sup>r</sup> Clarke Constable: The Court Sentenced him to bee admonished & to pay fees of Court.

## NORDEN admonish't

Sammuell Norden convict as aboues<sup>d</sup> The Court Sentenced him to bee admonished & to pay fees of Court.

## PHIPPEN admonish't

Benj<sup>a</sup> Phippen convict as aboues<sup>d</sup> The Court Sentenc<sup>d</sup> him to bee admonisht & to pay fees of Court.

## GROSS admonish't

Clemont Gross convict as aboues<sup>d</sup> The Court Sentenced him to bee admonished & to pay fees of Court.

## BISHOP admonish't

Nathaniell Bishop convict as aboues<sup>d</sup> The Court sentenc<sup>d</sup> him to bee admonished & to pay fees of Court.

## NEALE admonish't

Andrew Neale convict as aboues<sup>d</sup> The Court Sentenced him to bee admonished & to pay fees of Court.

## Committee about GREENS Estate

In Answer to the petition of m<sup>r</sup> Iohn Hull & Theophilus Frary administrato<sup>rs</sup> to the Estate of Ioseph Green Late of Boston deceased The Court Orders & appoints Cap<sup>t</sup> W<sup>m</sup> Davis & Cap<sup>t</sup> Thomas Lake & Deacon William Parcke as a Committee to hear & consider of those Erro<sup>rs</sup> that are in the Inventory presented of that Estate by the saide administrato<sup>rs</sup> as also to receive the claimes of the Credito<sup>rs</sup> or any who pretend aright to that Estate & to proporcion what each Credito<sup>r</sup> shall receive according to the value of the Estate if it proue

insolvant & all persons soe concerned are hereby ordered from time to time to attend the meeting of the s<sup>d</sup> Committee according to their appointment of time & place for meeting Cap<sup>t</sup> Davis to [207] Appoint time & place the s<sup>d</sup> Committee to make their return of what they doe therein to the next Court of this County the first day of s<sup>d</sup> Court.

#### Freeman Sworn

Ephraim Clarke of Medfeilde tooke the Oath of freedom of this Colony.

#### Committee about HAMBLETONS Estate

The Administrato<sup>rs</sup> to the Estate of the Late William Hambleton of Boston deceased viz<sup>t</sup> m<sup>r</sup> Humphry Hodges & Thomas Dewer applying themselves to the Court & declaring that they feared the Estate would not bee solvant: The Court Orders & appoints Cap<sup>t</sup> Thomas Lake m<sup>r</sup> Peter Lidgett & m<sup>r</sup> Iohn Joyliffe as a Committee to receive the claimes of the Credito<sup>rs</sup> to that Estate & to pass accounts & proporcion the Estate to the Credito<sup>rs</sup> & what they finde to bee difficult to refer it to the Court: And all persons concerned in that Estate are hereby Ordered from time to time to Attend the s<sup>d</sup> Committee Cap<sup>t</sup> Lake to appoint both time & place of meeting And that the s<sup>d</sup> Committee receive also the claimes of the Widow of the s<sup>d</sup> Hambleton, the Committee to make return of what they doe herein to the next Court of this County & in the meane time the s<sup>d</sup> Administrato<sup>rs</sup> haue power to dispose of & put to sale the goods belonging to s<sup>d</sup> Estate

#### ONIANs Guardian

Elizabeth & Hannah Onian daughters to Robert Onion of Dedham deceased made choise of Thomas Medcalfe of Dedham as their Guardian which hee accepted & the Court allowed of & also appointed him guardian to Grace Onion one of the daughters of the s<sup>d</sup> Onion till she come of age to choose for her selfe, hee giving security according to Law the s<sup>d</sup> Tho: Medcalfe as principall in twenty pounds & Cap<sup>t</sup> Daniell Fisher & Richard Ellis as Sureties in 10<sup>li</sup> apeice acknowledged themselves bound in Court to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Medcalfe should faithfully discharge his trust according to Law.

## ONIONS Guardian

Benj<sup>n</sup> Onion sonn to Robert Onion afores<sup>d</sup> made choise of Richard Ellis for his guardian which hee accepted & the Court allowed of hee giving security according to Law & the s<sup>d</sup> Richard Ellis as principall in twenty pounds & Dan<sup>l</sup> Fisher & Tho: Medcalfe as Sureties in 10<sup>l</sup> apeice acknowledged themselves bound in Court to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Richard Ellis should faithfully discharge his trust according to Law.

## Freemen Sworn

m<sup>r</sup> William Adams John Richards Jonathan Fuller & Iohn Baker all of Dedham tooke the Oath of freedom of this Colony [208]

LAMBS Sent<sup>a</sup>

Elizabeth Lamb the wife of Iohn Lamb of Brantery being convict in Court of swearing drunkenness & rayling The Court sentenced her to bee severely whip't with fifteen stripes & to pay charges of prosecution & fees of Court standing committed untill the Sentence bee performed.

DU PLISSES Sent<sup>a</sup>

Iohn du Plisse convict in Court of dispersing pewter counterfit mony The Court Sentenced him to give in bond with sureties of forty pounds to appeare before any Authority within this Iurisdiction to answer for his s<sup>d</sup> crime when called to it if in the Colony & in the meane time that hee shalbee of good behavio<sup>r</sup> & to pay fees of Court standing committed &<sup>a</sup>

## Milton Selectmen &amp; VOSSES agreement

Upon the hearing of the greivances of Robert Voss of Milton respecting a new highway Laide out through his Land & others in the s<sup>d</sup> Town of Milton by a Committee formerly appointed thereunto by the County Court; as also upon hearing what severall persons could say concerning the necessity of the s<sup>d</sup> way & considering the Agreement made between the Select men of the Town & the s<sup>d</sup> Voss The Court on due consideracion of the same judge meete to & doe hereby reverse their former act passed upon & confirmation



of the s<sup>d</sup> Committees return & doe allow of & confirme the aboues<sup>d</sup> Agreement.

[ In S. F. 1274 is a defective copy of the record of a meeting of the Milton selectmen, 25 February, 1672/73, the following pertinent parts of which remain:

After this there being some oppossition made the Select men made by way of petition to the Honored County Court held at Boston the 29<sup>th</sup> of apreil 1673 where upon the Court Did appoint and Empower Cap<sup>t</sup> Hopestill Foster Cap<sup>t</sup> Richard Braket and Seargeant Thomas Gardner as a com<sup>tee</sup> to vieiw the place and make Peace if they could or make there return to the next County Court which accordingly they did as followeth

On the reverse is the following record:

Wee whose Names are under writen Being appointed by the honered County Court April 29: 1673: to repare to Milton and hear and to consider of the Deference about a high way Layed out and make Return to the next Court of this County in abeandence to the said order we met at Milton on the time appointed where the Select men of the Town and others concerned did meet with us & haveing viewed the way Layed out and spent much time in agetation with those that seemed to apose the said way Laid out: at Last wee came to this conclution to witt: all Persons Concerned Did yeald that the Com<sup>tee</sup> appointed by the Court Should fully Determin where the way should go and whether an open way or only a drift way and all matters Concerning the same to be Left to your Decrestion where upon we met the second time and haveing futher hear and Considered of the said way and heard what each ptie had to say do give in our apprehentions Concerning the same as followeth. only with submission to the Honored Court to act futher as they see cause: first we do Judge that to be the most meet and covenant way for all p<sup>tis</sup> which was Lately Laid out by the select men a long by Ezra Claps house & so the Easter most end of the Barn that now Increas Sumner Injoys of good man Vose or his son and so a long till it corn to the corner Easterly of the field fenced in and from thence over good man Voses Land and others as Lately Laid out by the Towne men. . . . 4ly: because [the La]w doth alow Satsfaction for Land in Such Cases if the parties Requier it [we do th]erfore think meet that good man Vose shall be alowed after fourty shillings [by the] acre for so much of the way as runs thro his Field by his Barn to wards [the] meeting house and Robart Badcock and the rest the Same rate [of] 40<sup>s</sup> by the acre till it coms to the barn of Inrec Sumner alius Vose aforesaid and from them to be alowed after y<sup>e</sup> rate of ten shillings by the acre only reserveing the wood and timber on the said way to Each Party whose Land it may run thro Provided they take it off in covenant time that it be not prejudisous to the Passage

Hopestill Foster  
Richard Braket  
Thomas Gardner

Milton the 18: of July: 1673

there being some of the edge of the Leaf where this Record was Recorded worn off where I have Left blanks otherwise A true Coppie Atest John Daniell Town Cler]

Order for an Attachm<sup>t</sup> ags<sup>t</sup> WALSEBEE

The wife of David Walsebee of Brantery not appearing to answer her presentm<sup>t</sup> according to Legall Summons. The Court Orders the Select men of Brantery to take care of & regulate the s<sup>d</sup> Walsebee till the next Court of this County & that an Attachm<sup>t</sup> bee issued out for her appearance at s<sup>d</sup> Court.

## SMITH discharged

Upon due proclamacion made Ioseph Smith was discharged from his bonds of good behavio<sup>r</sup>

BELCHIOR Sentenc<sup>d</sup> to good behavio<sup>r</sup>

Iohn Belchior of Brantery appearing this Court according to his bond, to answer for the breach of his bond of good behavio<sup>r</sup> The Court on hearing what was declared against him Sentenc<sup>d</sup> him to renew his bonds for the good behavio<sup>r</sup> till the next Court & to pay charge of Witnesses & fees of Court.

COWELLS Sent<sup>a</sup>

Ioseph Cowell bound over to answer for his committing of Fornication with Hannah Tower daughter of Iohn Tower sen<sup>r</sup> of Hingham (by whome shee hath had a childe as by her own confession in her travail) and being called to Answer for it saide hee did not own it, but did not deny it: The Court on due consideracion of the same doe Sentence the s<sup>d</sup> Cowell to give in bond with Sureties of 120<sup>li</sup> to appear the next Court of this County to answer what shalbee further alleaged against him in the case & to abide the Order of the Court therein. [209] And in the meane to bee of good behavio<sup>r</sup> as also to pay two shillings sixpence per weeke in mony towards the maintenance of the Childe Lately born of the body of the s<sup>d</sup> Hanna Tower of Hingham from the time of its birth till the Court take further order as being the reputed father thereof according to Law & to pay charges of prosecution & fees of Court standing committed untill the Sentence bee performed.

## Order for a warrant to Medfield

The Court Orders a warrant to bee issued out for Sammuell Wight & Thomas Brick of Medfeilde to appeare at the next Court of this

County to Answer the s<sup>d</sup> Wight as Marshalls deputy for the serving an Execucion for Ioseph Clarke the s<sup>d</sup> Brick being an apprizer wherein the s<sup>d</sup> Clarke is greatly wronged by the Levy of the s<sup>d</sup> Execucion & apprisement thereon: & the Marshall did promiss in Court to extend the s<sup>d</sup> Execucion anew.

TYTE Fined 20<sup>s</sup>

Henry Tyte being convict by his own confession in Court of being drunck & it being after many convictions of the s<sup>d</sup> crime The Court Sentenced him to pay twenty shillings in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed.

KIBBY Fined 12<sup>li</sup>

Edward Kibby convict in Court of selling six pints of sider to Indians. The Court Sentenced him to pay twelve pounds in mony as a fine to the County with charges of prosecution & fees of Court standing committed untill the Sentence bee performed.

PEGGY discharged

Vpon due proclamacion made Edward Peggy was discharged from his bonds of good behavio<sup>r</sup>

The Court adjourned from March 31 to Feb<sup>ry</sup> 2<sup>d</sup>

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The Court met according to Adjournm<sup>t</sup> Feb<sup>ry</sup> 2<sup>d</sup> 1673@

Committee about Widow TAYLERS thirds

The Court Orders & appoints m<sup>r</sup> Anthony Stoddard L<sup>t</sup> Thomas Clarke & m<sup>r</sup> William Bartholmew as a Committee to Order & set out to Elizabeth Tayler widow & relict of Richard Tayler of Boston late deceased her thirds of the Estate lately belonging to the s<sup>d</sup> Richard Tayler in houseing & Land & to doe it soe as may bee most accomodable to her & to make return to the next Court of this County of what they doe herein, m<sup>r</sup> Stoddard to appoint time & place of meeting.

EGGERTON discharg<sup>d</sup>

Vpon due proclamacion made Peter Eggerton was discharged from his bonds of good behavio<sup>r</sup>. [210]

TOLDEVY Fin<sup>d</sup> 9<sup>li</sup>

William Toldervy convict by his own confession in Court of selling two quarts & one pint of strong Lique<sup>rs</sup> to an Indian The Court Sentenced the s<sup>d</sup> Toldervy to pay nine pounds in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed.

## HOLT Admonish't

Thomas Holt bound over to the Court to answer for his concealing & conveying away Cuthberd Fowell a prison<sup>r</sup> on board his Maj<sup>ties</sup> Friggot the Garland: The matter being not fully proved against him; but hee being suspitiously guilty thereof The Court Sentenc<sup>d</sup> him to bee admonished & to pay fees of Court.

HENRY Indian Sent<sup>a</sup>

Henry Indian committed to prison to answer for his assailing & abetting another Indian in strikeing of Edward Kibby; hee owned in Court that hee did take up a tray of the s<sup>d</sup> Kibby's & knockt it against his dore till hee broke it: The Court Sentenc<sup>d</sup> him to pay ten shillings in mony to Edward Kibby with charges of prosecution & fees of Court & prizon standing committed untill the Sentence bee performed.

CORNELIUS & SAM<sup>li</sup> Indians Sent<sup>a</sup>

Cornelius & Sammuell Indians committed to prison to answer for there killing of a Cow of Matthew Cushings which they owned in Court & pretended want of provitions: The Court Sentenc<sup>d</sup> them to bee severely whip't with twenty stripes apeice & to pay to Matthew Cushing eight pounds six shillings in mony & to pay fees of Court & prison standing committed untill the Sentence bee performed.

Execucion issued Feb<sup>ry</sup> 9. 1673. for 10<sup>li</sup> 16<sup>li</sup> w<sup>th</sup> fees of Court & prison.

STUART & LUDDEN Sent<sup>a</sup>

James Stuart & Ioseph Ludden being complained of to this Court for there remisness & carelesness in fitting the tackling of there Sloop whereby it's very dangerous & some haue already been wounded by the fall of the s<sup>d</sup> Sloopes boome one whereof is since dead. Upon due hearing and considering of the same The Court



Sentence<sup>d</sup> the s<sup>d</sup> Ludden & Stuart to pay unto Anne the Widdow of Tho<sup>s</sup> Williams (who was killed by the fall of the s<sup>d</sup> boome) twenty pounds in mony & to Robert Pegg who was wounded by the fall of s<sup>d</sup> boome ten pounds in mony & Order Execucion to issue out against the s<sup>d</sup> parties & Vessell for the same. the s<sup>d</sup> Stuart & Ludden appealed from this Sentence to the next Court of Assistants & themselves as principalls in sixty pounds & Iohn Bicknell & Iohn Porter as Sureties in 30<sup>li</sup> apeice acknowledged themselves respectiuey bound to . . . prosecute their appeal . . .

[ This case offers an interesting instance of the Mosaic Law being successfully invoked to reverse a judgment according to the Common Law.

The accident is described in S. F. 1270.10:

The Testimony of Iohn Pearce aged 41. yeares & Tho: Goodridge aged 41 yeares & Iohn Iemson aged 25. yeares testifieth & saith that on the 28<sup>th</sup> of Novemb<sup>r</sup> last about eleven a clock wee were all standing together at Iohn Peirces Shop dore where wee then saw the boome of Iohn Bicknells Sloope whereof Iames Stuard was Master, being topt up more then Ordinary haueing noe cleat on the boome to keepe the pennent of the topping lift on, the pennent slipt off the boome fell down to o<sup>r</sup> Sight, wee forthwith ran down & found Tho: Williams & Rob<sup>t</sup> Pegg lay dead [on] the wharfe the blood running out of saide Williams's mouth.

Thomas Goodridge  
Iohn Pearce  
Iohn Iemson

Sworn in Court by Iohn Pearce Ian<sup>ry</sup>: 31. 1673. as Attests: J. A. C

Sworn in Court by Tho: Goodridge Ian<sup>ry</sup>: 31: 1673 as Attests J. A. C

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

The petitions of the Widow Williams and of Robert Pegg are in S. F. 1270.3, 4. The two mariners' Reasons of Appeal follow (S. F. 1270.6). Their reference to the Mosaic law of murder (Numbers xxxv: 22-25) is this:

But if he thrust him suddenly without enmity, or have cast upon him any thing without laying of wait, Or with any stone, wherewith a man may die, seeing him not, and cast it upon him, that he die, and was not his enemy, neither sought his harm: Then the congregation shall judge between the slayer and the revenger of blood according to these judgments: And the congregation shall deliver the slayer out of the hand of the revenger of blood, and the congregation shall restore him to the city of his refuge, whither he was fled.

S. F. 1270.6

Joseph Luden & James Stuart their Reasons of Appeal From the Judgment of the Honored County Court held at Boston, Janr: 27: 1673

firs<sup>t</sup> Rea: Because Wee Humbly Conceiue no Ground of Censure because the Jury Namely the Inquest Found vs no way guilty of the mans death wittingly

or carelesly; although they were Required in his majestys Name to make Diligent Inquiry into the means & cause of his Death as apeares by their sumons & Returne: & they themselues had the same Evedence to Direct them wch the Honored County Court had being one of that Jury. And Therefore wee Humbly Conceiue no Ground of Sensure

2: Rea: Because yo<sup>r</sup> poore Apealents do Humbly Conceiue that they were sentenced not,: According to Any Lawe of God or of this Iurisdiction or full Evedence that doth proue vs Guilty.: First wee Knowe no Lawe of this Iurisdiction doth make vs Guilty of the mans Death willfully or carlesly: 2:ly. Wee Humbly Conceiue the Lawe of God doth no way make vs Guilty; For iff wee had thrust him through vnawares or cast a part vpon him that he had Died wee had bin Freed by the Law of God as Appeares: Numbr: 35: ver: 22: Much Less is their Cause of punishment when o<sup>r</sup> ax Fell of From the helue as Jn this Case it is Clear Jt did; But Jf Jt be Replied in this Case there was some Remisnes: why; surely as much might haue bin said in making the ax Fast on helue: And yet Jt is The Revealed will of God that such a person shall be Cleared by his Judges as Fully Apeares: Deut: 19: Josh: 20: Thirdly: wee Humbly Conceiue no Full Evedence For the wittnes say that the boome was hoysed higher then ordinary: Jt may be: higher then themselues ordinarily doe hoise theires but it is Evedent that the boome m<sup>u</sup>st be hoysed higher For some worke then others as for hay & wood &° : : But the Boome Could not be hoysed higher then the peanant wold permit; And Jf Jt had bin as high as that it had bin not Extryordinary.: But Jt was not so high by eight or ten Foot therefore no Fault: 2ly where as the Evedenc doth swear there was no cleat on the End of the boome.; Neither is Jt vsuall or Customory so to haue: as did apeare to the Honored Court by many seamen when asked by the honored Governor & also by one of the Evedences although he had sworne before that there was no cleat. And also the other Evedenc Namely John Peirec Did then Affirme in the p<sup>r</sup>sence of the Court that he did not Knowe whether there was any Cleat or No: Although he had sworne befo<sup>e</sup> that there was no cleat: Therefore this Evedence Condemne vs not,: Butt Rather Cleared vs by their verdict when on the Inquest Therefore not Guilty; Therefore wee Humbly Conceiue wee were to be aquited by o<sup>r</sup> Judges & not to haue o<sup>r</sup> Estates taken away Jf wee had any, Contrary to the Fundementall Liberty of this Iurisdiction as Apears Lawe booke. page. 1: For Jn such Cases who then Can say his Estate is his oune For Jf a vesell be vnder saile & A great w<sup>i</sup>nd arise & the Tack break or slip & overset the vessell And p<sup>r</sup>[torn] are cast away & seamen Escape; But afterward Judged that their [torn] not that Care Taken to prvent as As might,: For these poore sea[torn] to be forced to maintaine the Relations surviving: surly one [torn] Would Thinke Jt very hard against Those that had bin Jn Like Danger as was Fully o<sup>r</sup> Case

3 Rea: of o<sup>r</sup> Appeal is Because yo<sup>r</sup> poore Apealants Could not vnderstand That they had that Comon & Legall Way of Tryall as is vsuall in such case For they being Required to apeare before the Court For misdemeano<sup>r</sup> but on Tryall Nothing of Guilt was Found Jn vs as wee conceiue against God or the King But AdJudged to pay Thirty pounds in mony to those private persons that Complained of wrong,: which [torn] it had bin more Legall For To haue sought their Remedy if [wronged] Jn the Comon Road of Justice, where: both they & wee might haue bin Tried by o<sup>r</sup> Equalls according to the Great & Granted priuiledg of Engl<sup>i</sup>shmen,: And somtimes according to the proceeding of the County Court For houe

vsuall is Jt For offenders to be punished by them for the Criminall Fact and the private Concernes Left to a Legall proces[s] by way of Civill action: as Jstances may be given in this case Jf need require,.

4 Rea: Because wee humbly Conceiue that the vessell is not Liable to Exicution To make Satisfaction For o<sup>r</sup> sentence: The Sentence being only against vs and not against the vessell: And yett Execution to be Issued out against vs & the vessell: which wee Humbly Conceive is not according To Lawe: For two men only to be condemned as Guilty of a Crime: and three to be Exicuted; For. first Jf there were any Remisnes or Carelesnes Jt was not in the Vessell or owners and therefore not Liable to Exicution 2:ly. The vessell was out of o<sup>r</sup> Jmploy & possession: being delivered to the owner, the voyage being Ended A Considerable time before the County Court The p<sup>m</sup>ises Considered yo<sup>r</sup> poore Appealants wee Cannot see ground for such a sentence Except it were vpon the account of mercy & pitty to the afflicted vpon theire petition; Jf so Then surely the Feeding of the Hungry will be the starving of the Naked: As: surely Honored Gentlemen will be the Case of yo<sup>r</sup> poore Apealent: Jf his Labor be taken away to pay this Fine who haue not Else to maintaine his poore wife & children but of Nescity must be objects of Chartyty to Freinds or suffer much

Yo<sup>r</sup> Humble Apealants:

Joseph Ludden  
James Stewart

Febr: 23: 1673

These Reasons were received Feb<sup>ry</sup> 24<sup>th</sup> 167<sup>3</sup> as Attests Js<sup>a</sup> Addington Cler.

S. F. 1270.7

Jn Answer to Joseph Ludden & James Stewart theire Reasons of Appeal from the Sentence of the last County Court in Boston- - -

To theire first Reason, I Answer the inquest impanaled to inquire into the way & meanes of the s<sup>d</sup> Williams's death, were not required to enquire after carelesness about the occasion of it but wilfullness; neither are they acquitted by the inquest as they pretend; but they doe make theire Return that the s<sup>d</sup> Williams's death was occasioned by the fall of a sloopes boome; which the Witnesses proue was the Sloope the Appellants sailed in; neither doe they deny it

To theire 2<sup>d</sup> Reason J answer though it bee not proved against the Appellants that they are wilfully guilty, & soe not tried capitally; yet are they carelessly guilty as the Witnesses testify; the boome being top't up more then ordinary, noe cleat being upon it & soe both themselves & Vessell liable to censure & damages by the Laws of this Jurisdiction: See Law title. — Maritime affaires — Sect. 13. where if any Ship or Vessell shall damnify another Ship or Vessell by running onboard her, the party offending (that is the Master) shall pay the damage & such Ship or Vessell shalbee liable to arrest & soe consequently to Execucion for responding the damage & making Satisfaction: and if the law make such provision for the securing of mens goods; certainly [much] more for the safety of theire lives: And if there bee reason for the person whose goods are damnified to bee recompensed for the same how much more reasonable is it that if a womans husband who is her & her Childrens Liuelihood haue his life or the use of his limbs taken away by such carelesness, that Shee should bee considered- - -

To his 2<sup>d</sup> Plea. The Law of god doth not seeme to acquit the Appealants as they would pretend; though it may acquit them from being punished capitally;



Yet may they bee Amerced for the same You may see in the .21. Exodus: 33.34. v<sup>rs</sup> if a man open a pit or dig a pit & not cover it & a beast fall therein the Owner of the pit shall make it good & give mony unto the Owner of the beast; Now if the digger of the pit by his carelessness in not covering it become soe far guilty of the death of the beast as to pay for it: then certainly if the Appellants by there carelessness or Negligence (in not cleating there boome and topping of it higher then ordinary in such a windy season as that is saide to bee) are soe far, guilty of taking away the life of one man & maiming anoth<sup>r</sup> can it bee thought equall that these poor women & there familys should not bee in some measure considered; 20<sup>li</sup> being but a poor compensation for the life of a man & 10<sup>li</sup> for a mans limbs: And whereas the Appellants say there boome was not topped higher then Ordinary; if the Hono<sup>rd</sup> Court & Jury bee pleased to consider the Evidences they Swear positiuely the boome was extraordinarily topped, who are J suppose as much Seamen as the Appellants: Neither will the Appellants instance in a Ship or Vessells oversetting by the breaking or slipping of a tack bee paralell to o<sup>r</sup> case; Nor doe they therein argue like Marrin<sup>rs</sup> for by the slipping or breaking of a tack the sail mast & yard is in more danger of splitting or breaking then is the Vessell of oversetting

To there 3<sup>d</sup> Reason: The Appealants therein doe too much reflect upon the Hono<sup>rd</sup> Court appealed from, as in not having the common & legall way of tryall as is usuall in such cases; for there was a complaint exhibited against them & the Appellants had legall notice thereof being bound over to answer it & there was soe much guilt proved against them as for the Court to declare such a Sentence against them; & the persons wronged haue Liberty by Law to seeke there redress by way of complaint or action; neither were the Appellants denyed the liberty of law in being tryed by a Jury (as they unworthily insinuate) they never pleading for it upon there tryall.

To there 4<sup>th</sup> Reason, J thinke there is little need of Answer haveing spoken to it already in the 2<sup>d</sup> reply; the Vessell is liable to Execucion by o<sup>r</sup> Law title maritime affaires Sect: 13. & although before the tryall, the Vessell (as they pretend) was deliuered up to the Own<sup>rs</sup> yet that doth not exempt her by o<sup>r</sup> law for any damage done by her during there Emprouement of her; & although the Appellants (as they say) cannot see ground for such a Sentence except upon the account of mercy & pity to the Afflicted; possibly not; they not being proper judges of there own case & most men being unwilling to acknowledge they see what is against themselves; Yet those to whome it did properly belong to judge; did in justice finde cause to declare such a Sentence against the Appellants & the Vessel; & although the Feeding of the hungry may bee the starving of the naked justice hath & ought to haue its pure streames which here in this case is mixt with mercy. as J doubt not but the Hono<sup>rd</sup> Court & Jury will cleerely see; to whose serious consideration & determination J commend the case & Subscribe

Yo<sup>r</sup> Hono<sup>rs</sup> humble Servant by Order & appointment of the County Court of Suffolke

Js<sup>a</sup> Addington Cler

Other documents in this case are the inquest post mortem, "Dr." Daniel Stone's certificate of Pegg's injuries, writs and warrants. The Court of Assistants (Records, i. 5) reversed the judgment of the lower court.]



PREIST Fin<sup>d</sup> 5<sup>li</sup>

Margaret Preist bound over to this Court to answer for her committing of Fornication of which shee was convict in Court by her own confession & brought in her bastard childe in her armes charging Iosias Rose [211] to bee the Father of it: And the Midwife & other women pu<sup>r</sup>sent with her at her travell testifying that Shee did persist in soe chargeing of him. being put to it in her Extremity The Court Sentenced her to bee whip't with fifteen stripes or to pay five pounds in mony fine to the County & fees of Court standing committed untill the Sentence bee performed.

ROSE<sup>s</sup> bond forfeited

Josias Rose, not appearing upon due calling to Answer according to his bond for his committing Fornication with Margaret Preist & William Kent his Surety being called to bring in saide Rose answered that hee was escaped: The Court declares the s<sup>d</sup> Rose to bee the reputed Father of the Childe Lately born of the body of Margaret Preist & declare both principall & Sureties bond forfeited & Order William Kent the Surety to pay two shillings & sixpence per weeke in mony to Margaret Preist towards the maintenance of her Childe from the time of its birth till the Court take further Order.

BENJ: NEGUS to pay Cap<sup>t</sup> OLIV<sup>r</sup> 8<sup>s</sup> per annum for discharge

Upon a certificate from Cap<sup>t</sup> Iames Oliver The Court remits four shillings of the annuity of twelve shillings formerly enjoined by the Court on Benj<sup>s</sup> Negus to pay to Cap<sup>t</sup> Olivers Company for his discharge from trayning and henceforward Order the s<sup>d</sup> Negus to pay but eight shillings per annum.

Roxberry Fin<sup>d</sup> 5<sup>li</sup>

The Town of Roxberry being presented by the Grand jury for theire neglect in running the Line with the Town of Dedham according to Law: theire appearing some in behalfe of the Town to answer the presentm<sup>t</sup> they did owne in Court that there was a neglect in that the Line had not been run within the time Limited by Law. The Court Sentenc<sup>d</sup> the s<sup>d</sup> Town to pay five pounds in mony as a fine to the County according to Law.

## BARKER bound to the good behavior

Edward Barker being complained of for bad & irregular carriages towards his wife neighbors & others The Court Sentenced him to give in bond with Sureties of twelve pounds for his good behavior till the next Court of this County & then to appear; the sd Edward Barker as principall in six pounds & William Hawkins & William Cluffe as Sureties in 3<sup>li</sup> apiece acknowledge themselves respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke on that condicion.

## FLOODE bound to the good behavior

Henry Floode being complained of for bad carriages towards his wife abuseing her in ill words calling her whore & cursing of her: The Court Sentenced him to giue in bond with Sureties of twelve pounds for his good behavior till the next Court of this County & then to appear the s<sup>d</sup> Henry Floode as principall in six pounds and George Orris & Iohn Orris as Sureties in 3<sup>li</sup> apiece [ 212 ] acknowledged themselves respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke on that condicion.

BERNARDS adm<sup>r</sup> discharge & Court Order

The Administrato<sup>rs</sup> to the Estate of the Late m<sup>r</sup> Sammuell Bernard deceased viz<sup>t</sup> m<sup>r</sup> Iohn Usher & William Ingram presenting to this Court an Acco<sup>t</sup> of theire s<sup>d</sup> Administracion which the Court accepted The Court discharged them therefrom & doe Order & Empower m<sup>r</sup> Iohn Hayward to demand & gather in all debts from any & every person whatsoever that are yet standing out due to that Estate.

## Court Order about GEETH's Estate

Cap<sup>t</sup> Thomas Savage Administrato<sup>r</sup> to the Estate of Charles Geeth produceing an Inventory of s<sup>d</sup> Estate upon Oath The Court Orders him to pay what is remaining of that Estate in his hands to the Treasuro<sup>r</sup> of the County of Suffolke & soe discharge him from his s<sup>d</sup> Administracion

The Court Adjourned from Munday the 2<sup>d</sup> to Thursday the 5<sup>th</sup> of February at nine a clock.

February 5<sup>th</sup> 1673@ The Court met according to Adjournment  
Present

IN<sup>o</sup> LEVERETT Esq<sup>r</sup> Go<sup>r</sup>

SIMON BRADSTREET	} Esq <sup>rs</sup>
EDW: TYNG	
W <sup>m</sup> STOUGHTON	
MAJ <sup>r</sup> THO: CLARKE	

Matthew Atkins & Nathaniell Peirce both of Boston tooke the  
Oath of freedom of this Colony.

MULLYN Fin<sup>d</sup> 40<sup>s</sup>

Isaac Mullyn being committed to prison for breach of his Ma<sup>ties</sup>  
peace in strieking Iohn Faireweather & by himselfe & others taking  
possession of a Ship in this harbour of Boston The Court Sentenced  
the s<sup>d</sup> Mullyn (in behalfe of himselfe & acompanies to pay Forty  
shillings in mony as a fine to the County & fees of Court.

Dedham Fin<sup>d</sup> 5<sup>li</sup>

The Town of Dedham being presented by the Grand jury for not  
renewing the markes in theire Line between them & Roxbury accord-  
ing to Law: The Court Sentenc<sup>d</sup> them for theire neglect thereof to  
pay five pounds in mony as a fine to the County.

Advice to JONES

In Answer to the petition of Iohn Iones The Court doth advise him  
to continue his Service with his Master George Nowell & advise the  
s<sup>d</sup> Nowell not to pay any mony upon his bond given to m<sup>r</sup> Penny for  
the saide Iones without hee bee compelled thereto by Law.

LAMBS Sent<sup>a</sup>

Iohn Lamb & Elisabeth his wife being complained of for theire  
bad & abusive carriages one to another The Court Sentenc<sup>d</sup> them both  
to bee sent to the house of correction there to bee received & enter-  
tained according to the Orders of the house to bee continued there  
till Saturday morning next & to pay fees of Court & the Court reverses  
theire former Sentence declared ags<sup>t</sup> y<sup>e</sup> s<sup>d</sup> Elizabeth [ 213 ]

GREEN Fin<sup>d</sup> 40<sup>s</sup>

William Green convict by his own confession in Court of carrying powder from Noddles Island on board of Ship to bee transported out of the Country: The Court Sentenc<sup>d</sup> him to pay forty shillings in mony as a fine to the County and fees of Court standing committed untill the Sentence bee perform<sup>d</sup>

SAXTON Fin<sup>d</sup> 5<sup>li</sup>

Thomas Saxton sen<sup>r</sup> convict by his own confession in Court of selling strong beere without Licence The Court Sentenced him to pay five pound in mony fine to the County & fees of Court. the Court respited the taking of it till further order.

DAVIS Sent<sup>a</sup>

Sarah Davis (heretofore Francis) convict by her own confession in Court of committing Fornication & having had an illegitimate Childe The Court Sentenc<sup>d</sup> her to bee whipt with 15 stripes or to pay five pounds in mony fine to the County & fees of Court standing committed untill the Sentence bee performed.

OWENS Sent<sup>a</sup>

Thomas Owen convict by his own confession in Court of cursing swearing & desperate & dangerous actions toward his Master John Cleere by holding out his knife at him as if hee would cut or stab him: The Court Sentenced the s<sup>d</sup> Owen to bee severely whip't with thirty stripes & to pay fees of Court & prizon standing committed untill the Sentence bee performed.

DANIELLS Sent<sup>a</sup>

Thomas Daniell convict of stealing severall goods from Charles Gosfrit Pheasant Eastwick & others The Court Sentenc<sup>d</sup> him to pay unto the s<sup>d</sup> Gosfrit Seventy seven pound two shillings & six pence, unto s<sup>d</sup> Eastwick £51:8:6. & to pay unto John Alden £:2:15:0. unto Francis Lynsford £:01:16:0. being that threefold restitution that the Law requires & to return unto the severall persons afore-nam'd what goods of theirs are founde with him & under the custody



of the Law: & also to bee severely whip't with twenty stripes the s<sup>d</sup> Gosprit Eastwick Alden & Lynsford to pay the charges of prosecution & fees of Court and prison before they receive theire goods.

#### Leather forfeited

Whereas there was a parcell of unwrought Leather seized on board the Catch whereof Elias Roe is master bound for Jamaica part whereof was shipped by Iacob Iesson & part by hope Allen contrary to Law The Court on hearing what the partys could say for themselves do declare & Order that the Seizure stand good & that the Leather bee disposed of according to Law as forfeited except the next Generall Court (upon the application of the parties concerned to them) see cause to remit it.

#### Order for provicion for Ship Katharin

The Court Orders & appoints m<sup>r</sup> Humphry Davy to supply the Seamen belonging to the ship S<sup>t</sup> Katharin [214] Thomas Frizell Master with necessary Sea provitions untill the Court of Admiralty shall take further Order.

#### Committee about STEVENS's Estate

The Court Orders & appoints Cap<sup>t</sup> Edward Hutchinson & m<sup>r</sup> Iohn Richards as a Committee to receive the claimes of the Creditors to the Estate of Nicholas Stevens of Boston deceased & to pass the Accounts of the s<sup>d</sup> Creditors & to proporcion what each Credito<sup>r</sup> shall receive according to the value of the Estate if it prove insolvent: Cap<sup>t</sup> Hutchinson to appoint time & place for meeting & all persons concerned therein are hereby Ordered from time to time to attend the meeting of the s<sup>d</sup> Committee to make return of what they doe herein to the next Court of this County.

#### Order about MALLIOTS Estate

Mr. Sammuell Shrimpton administrato<sup>r</sup> to the Estate of Iames Malliott deceased presenting an Inventory of s<sup>d</sup> Estate upon Oath to this Court. The Court Orders the s<sup>d</sup> m<sup>r</sup> Shrimpton to pay unto the Treasuro<sup>r</sup> of the County of Suffolke what yet remains in his hands of that Estate & soe discharge him from his Administracion.

This Court dissolved February 5<sup>th</sup> 1673. @

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Present

IOHN LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>

EDWARD TYNG Esq<sup>r</sup> Assist.

HARWOOD & NAYLOR to MASON

Thomas Harwood & Edward Naylor personally appearing February 7<sup>th</sup> 1673 acknowledged a judgment against themselves & their Estates jointly & severally for one hundred & eighteen pounds in money (according to bond bearing date May 27<sup>th</sup> 1671) being principall & interest) unto Arthur Mason one of the Executors to the Last will & Testament of Ioseph Deacon deceased.

Execucion respited till May 27<sup>th</sup> 1674.

as Attests. Js<sup>a</sup> Addington Clerk.

Execucion issued 8<sup>br</sup> 8: 1674. [215]

OVERMAN to FRENCH

Thomas Overman personally appearing before Iohn Leverett Esq<sup>r</sup> Gov<sup>r</sup> & Edward Tyng Esq<sup>r</sup> Assist: Aprill: 27<sup>th</sup> 1674.

Acknowledged a judgment against himselfe & Estate for twenty four pounds nine shillings in money unto Phillip French being due upon bond with interest.

as Attests. Js<sup>a</sup> Addington Clerk.

Execucion issued June 12<sup>th</sup> 1674.

At a County Court held at Boston Aprill: 28 1674@

Present

JN<sup>o</sup> LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>

W<sup>m</sup> STOUGHTON Esq<sup>r</sup>

SIMON BRADSTREET Esq<sup>r</sup>

MAJO<sup>r</sup> THO: CLARKE Esq<sup>r</sup>

EDW: TYNG Esq<sup>r</sup>

Grand jury same with the former Court.

Jury of Tryalls Sworn

m<sup>r</sup> Jn<sup>o</sup> Fayrweather

Tho: Holman

Tho: Gill

Tho: Kellond

Jn<sup>o</sup> French sen<sup>r</sup>

Sampson Shore

Jn<sup>o</sup> Gravener

Jn<sup>o</sup> Bird

Jonath: Fayrebank

Shuball Seaver

Jn<sup>o</sup> King

Joseph Morse

Tho: Moore in Jn<sup>o</sup> Bird's room after hearing six cases.

[ SHIPPEN v. GREEN's Estate ]

Edward Shippen plaint. ags<sup>t</sup> John Hull & Theophilus Frary as administrato<sup>rs</sup> to the Estate of Joseph Green deceased Defend<sup>ts</sup> for non paiement of Ninety seven pounds fourteen shillings due by booke from the saide Green & all other due damages according to Attachment. Dat. January 26<sup>th</sup> 1673. . . . The Jury . . . founde for the plaintiffe Ninety seven pounds fourteen shillings in mony & costs of Court: This Estate being returned by the Committee (who were appointed to receive the claimes of the Credito<sup>rs</sup> & to proporcion the Estate to them if it proved insolvant) to bee founde at present to fall far short of the debts due from the s<sup>d</sup> Estate & having according to the Order of Court proporcioned the Estate to eight shillings & two pence in the pound. The Court Orders that Execucion issue out upon this judgment according to that proporcion & costs of Court & for noe more untill the Court take further order. the costs of Court amounting to

SMITH ags<sup>t</sup> PRETIOUS

Thomas Smith Command<sup>r</sup> of the Ship SeaFlower plaint. ags<sup>t</sup> Charles Precious defend<sup>t</sup> in an action of the case for not making paiement of the summe of five pounds Lawfull mony of England

which was due for saide Pretious his passage from Boston to London in the yeare 1671: w<sup>ch</sup> saide Smith in saide Ship & all due interest & other due damages according to Attachm<sup>t</sup> Dat: Aprill: 18<sup>th</sup> 1674. . . . The Jury . . . founde for the plaintife six pounds in mony & costs of Court being seventeen shillings & six pence.

Execucion issued 29: Aprill 1674 for: £:6:17:6. [216]

#### MERRIWEATHER ags<sup>t</sup> DOWNE

Thomas Merriweather Attourney to Phillip French plaint. ags<sup>t</sup> Thomas Downe Master of the Catch Dove Defend<sup>t</sup> in an action of the case for damage upon goods shipped in his saide Catch on the acco<sup>t</sup> of saide French & not deliuering them in good Order & well conditioned according to bill of Loading with other due damages according to Attachm<sup>t</sup> Dat. Aprill 23<sup>d</sup> 1674. The defendant Objecting ags<sup>t</sup> the process for that the plaint. was not of age according to Law to Sue. Peter Sergeant Obliged himselfe in Court unto Tho: Downe the Defend<sup>t</sup> in the summe of Eighty pounds mony to saue the s<sup>d</sup> Down harmless from any damage from any other person for the s<sup>d</sup> Merriweather's prosecution of this Suite & to respond the s<sup>d</sup> Downe his just damage if hee shall carry the accion against s<sup>d</sup> Merryweather: after which . . . The Jury . . . founde for the defendant costs of Court.

#### HAWKINS ags<sup>t</sup> SHEAFE

Thomas Hawkins plaint. ags<sup>t</sup> Sampson Sheafe Defend<sup>t</sup> in an action of the case for the withholding certain brewing vessells after they were demanded (that is to say) one Mashing vessell one under back three coolers & one tunning vessell w<sup>ch</sup> vessells was in the house then in the possession of the s<sup>d</sup> Sheafe by which detaining & keeping from the s<sup>d</sup> Hawkins his vessells & their standing dry a considerable time by which the saide vessells was much damnified to the great damage of the plaintife with other due damages according to Attachm<sup>t</sup> Dat: Aprill: 13<sup>th</sup> 1674. . . . The Jury . . . founde for the plaintife four pounds ten shillings in mony & costs of Court being Seventeen shillings six pence.

Execucion issued May 2<sup>d</sup> 1674

[See Sheafe v. Hawkins, pp. 1-3, and Hawkins v. Sheafe, pp. 275-7, above.]



RICHARDS ags<sup>t</sup> STARKWEATHER &<sup>a</sup>

David Richards of Roxberry plaint. ags<sup>t</sup> Robert Starkweather & Edward Bragg administrato<sup>r</sup> to the Estate of John Wright Late of Nuberry Defendants in an accion of the case for withholding & not paying a debt of ten pounds of mony of England due by the assignment of a bill of William Whitred of Jpswich bearing date the 17th day of the 8 month 1655 as also by a bond und<sup>r</sup> the hand of the s<sup>d</sup> Starkweather & Wright dated: 14:10: 1655 with all due damages & forbearance according to Attachm<sup>t</sup> Dated 30. 1. 74. . . . The Jury . . . founde for the plaintife twelue pounds ten shillings in mony & costs of Court.

ROUSE ags<sup>t</sup> COOKE

Mary Rouse plaint. ags<sup>t</sup> Francis Cooke Defend<sup>t</sup> in an action of the case for withholding of a debt of five pounds & fifteen shillings New-England mony being for five pounds mony lent him & the remainder p<sup>d</sup> by his order to seuerall persons. [217] according to Attachm<sup>t</sup> Dat: March 6<sup>th</sup> 1673. The accion being called the plaint. appeared the Defendant was called seuerall times; also Thomas Thacher junio<sup>r</sup> his Surety was called to bring him in according to his bond; but neither of them appearing The Court declared there bond forfeited & Order the action to proceed to tryall & if the case bee founde for the plaint. judgment to bee entred both against principall & Surety & Execucion to issue out accordingly & to bee in force against the Surty as well as the principall for one month after judgment given according to Law. . . . The Jury . . . founde for the plaintife five pounds fifteen shillings in mony & costs of Court being eighteen shillings & six pence.

Execucion issued May: 16<sup>th</sup> 1674 for £6.13.6. m<sup>o</sup>

ROSE ag<sup>t</sup> AMBROSE

Roger Rose plaint. ags<sup>t</sup> Sammuell Ambrose Defendant in an action of the case for taking away the saide Rose his parts of the Shallop called the Prosperous her burthen twenty tunns or thereabouts with the sailes anchors & cables & other rigging well fitted with a cannoo, & other goods to the plaintifes great damage & other due damages according to Attachm<sup>t</sup> Dat: Aprill: 16<sup>th</sup> 1674. . . .

The Jury . . . founde for the Defendant costs of Court being fifteen shillings & eight pence.

Execucion issued May 7<sup>th</sup> 1674.

GIBBS ag<sup>t</sup> BENNET

Robert Gibbs who married Elizabeth Sheafe one of the Executrixes of the Last will & Testament of m<sup>r</sup> Henry Webb Late of Boston deceased plaint. ags<sup>t</sup> Sammuell Bennet of Rumny Marsh Defend<sup>t</sup> in an accion of the case for the forfeiture of a bond of Fifty pounds sterling for the non paiment of a debt of twenty five pounds sterling as further appeares by the saide bond & due damages according to Attachm<sup>t</sup> Dat. February 20<sup>th</sup> 1673. The accion being called the plaint. appeared; The Defend<sup>t</sup> was called seuerall times; also Elisha Bennet his Surety was called to bring him in according to his bond; but neither of them appearing The Court declared their bond forfeited & Order the accion to proceed to tryall & if the case bee founde for the plaint. judgment to bee entred against principall & Surety & Execucion to issue out accordingly & to bee in force against the Surety as well as the principall for one month after judgment given according to Law: . . . The Jury . . . founde for the plaintife the forfeiture of the bond sued for being Fifty pounds & costs of Court being twenty eight shillings.

Execucion issued May: 7<sup>th</sup> 1674. [ 218 ]

CONNY ag<sup>t</sup> NOWELL

John Conny Attourny to Robert Penny plaint. against George Nowell Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat Aprill. 23<sup>th</sup> 1674. The plaintife in failer of the prooffe of his power was nonsuited.

HALSALL ag<sup>t</sup> SHAW

George Halsall plaint. ags<sup>t</sup> Fearenot Shaw Defend<sup>t</sup> in an accion of the case for the forfeiture of a bond of Arbitration of thirty pounds sterling; which bond beareth date the two & twentieth day of October. 1672. with all due damages according to Attachm<sup>t</sup> Dat: Aprill: 21<sup>th</sup> 1674. The accion being called the plaint. appeared; The Defend<sup>t</sup> was called severall times; also John Walker his Surety was called to bring him in according to his bond; but neither of them appearing The Court declared their bond forfeited & Order the accion

to proceed to tryall & if the case bee found for the plaint. judgment to bee Entred against principall & Surety & Execucion to issue out accordingly & to bee in force against the Surety as well as the principall for one month after judgment given according to Law: . . . The Jury . . . founde for the plaintife the forfeiture of a bond of thirty pounds sued for & costs of Court being twenty nine shillings & two pence.

Execucion issued May: 2<sup>d</sup> 1674.

JAY ag<sup>t</sup> ADKINS

Anne Jay of Hingham widdow plaint. agas<sup>t</sup> Thomas Adkins of Boston Carpenter Defend<sup>t</sup> in an action of the case to the value of thirty pounds in mony which is due unto the s<sup>d</sup> Anne Jay from the saide Tho: Adkins as may appeare by an obligation under his hand & seal bearing date the twenty eight day of October 1673. with all due damages according to Attachm<sup>t</sup> Dat. Aprill. 14<sup>th</sup>: 1674. The action being called the plaint. appeared, The Defend<sup>t</sup> was called severall times; also Cap<sup>t</sup>: Sam<sup>ll</sup>: Scarlet his Surety was called to bring him in according to his bond; but neither of them appearing The Court declared theire bond forfeited & Order the accion to proceed to tryall & if the case bee founde for the plaint. judgment to bee entred against principall & Surety and Execucion to issue out accordingly & to bee in force against the Surety as well as the principall for one month after judgment given according to Law: . . . The Jury . . . founde for the plaintife the forfeiture of a bond of thirty pounds in mony & costs of Court. Cap<sup>t</sup>: Samm: Scarlett as Surety Afterwards appearing did in behalfe of the principall appeal from this judgment to the next Court of Assistants. [219] and the saide Sammuell Scarlett as principall in sixty pounds & John Viall sen<sup>r</sup> & William Hawkins as Sureties in thirty pounds apeice acknowledged themselves respectuely bound to the Treasuro<sup>r</sup> of the County of Suffolke & party concerned on condicion that the saide Tho: Adkins should prosecute his appeal from the judgment of this Court at the next Court of Assistants to effect:

[ See Records of the Court of Assistants, i. 21.]

MANNING ag<sup>t</sup> MUZZEY

Anne Manning sole Executrix to the Last will and Testament of m<sup>r</sup> Richard Parker deceased plaint. against Benjamin Muzzey sen<sup>r</sup>

Defend<sup>t</sup> in an action of the case for withholding a debt of thirty pounds or thereabouts due by booke & due damages according to Attachm<sup>t</sup> Dat: January 29<sup>th</sup> 1673. The action being called the plaintife appeared; The Defendant was called seuerall times; also John Wiswall jun<sup>r</sup> his Surety being called to bring him in according to his bond; but neither of them appearing The Court declared their bond forfeited & Order the action to proceed to tryall & if the case bee found for the plaint. judgm<sup>t</sup> to be entred against principall & Surety & Execucion to issue out accordingly & to bee in force against the Surety as well as the principall for one month after judgm<sup>t</sup> given according to Law: . . . The Jury . . . founde for the plaintife eighteen pounds ten shillings eight pence & costs of Court.

COWELL ag<sup>t</sup> RIGBY

Edward Cowell plaint. ags<sup>t</sup> Sammuell Rigby Defendant in an action of the case for withholding a debt of fourteen pounds due by bond with all due damages according to Attachm<sup>t</sup> Dat. Aprill 21<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. the forfeiture of the bond fourteen pounds ten shillings sterling & costs of Court being twenty three shillings & two pence.

Execucion issued May 2<sup>d</sup> 1674.

PHILLIPS ag<sup>t</sup> WHARTON<sup>n</sup>

Zechariah Phillips plaint. ags<sup>t</sup> Richard Wharton Defend<sup>t</sup> in an accion of the case for that the saide Wharton haue for aboue this twelve months deprived saide Phillips of the use of his well having utterly poisoned or spoiled the water with the dregs & filth of his saide Wharton's stills & fatts & saide Wharton still continues his soe doing not withstanding saide Phillips long complaint of it to him and desires saide Wharton to make good his water & well again which hee refused & hath not done it to the damage of the plaintife about fifty pounds in mony by reason hee cannot sell nor let his house nor land nor haue the use of any other well in his ground but the saide stills will spoil it as aboue & all other due damages according to Attachment Dat. Aprill. 23<sup>th</sup>. 1674. [220] . . . The Jury . . . founde for the plaintife three pounds damage in mony & costs of Court.



DOWNE ag<sup>t</sup> MERRIWEATHER

Thomas Downe plaint. ags<sup>t</sup> Thomas Merriweather Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill: 23<sup>th</sup> 1674. The plaintife in failure of his process was nonsuited The Defend<sup>t</sup> being under age to be sued.

GIBBS ag<sup>t</sup> FAIRFEILD

Benjamin Gibbs plaint. ags<sup>t</sup> Daniell Fairfeild Defend<sup>t</sup> in an action of debt of six pounds eight shillings or thereabouts in mony due for goods sold & delivered him as appeares by booke & due damages according to Attachm<sup>t</sup> Dat: February. 9<sup>th</sup> 1673. . . . The Jury . . . founde for the plaintife six pounds eight shillings & costs of Court. being eighteen shillings & two pence.

Execucion issued: 15<sup>th</sup> July: 1674. for. 6<sup>li</sup> 8<sup>s</sup> & 18<sup>s</sup> m<sup>o</sup> Costs.

HILL ag<sup>t</sup> EMMONS

Thomas Hill Tanner plaint. ags<sup>t</sup> Obadiah Emmons Def<sup>t</sup> in an accion of debt of Eighteen pounds due by bill & due damages according to Attachm<sup>t</sup> Dat: Aprill: 23. 1674. . . . The Jury . . . founde for the plaintife nine pounds nine shillings in Shoes & costs of Court.

CROWN ag<sup>t</sup> SPRAGUE

Colonell William Crown ags<sup>t</sup> Jonath<sup>a</sup> Sprague Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. 10<sup>th</sup> 12<sup>mo</sup> 1673. The plaint. was nonsuited in failer of his process.

ALLEN ag<sup>t</sup> JEWET &<sup>a</sup>

Bozoon Allen of Boston Tanner Attourney to Edward Rawson the onely surviving Overseer to the Last will & Testament of the late Bozoon Allen of Boston deceased plaint. ags<sup>t</sup> Jeremiah Jewet as hee is sonn & heire; as also Phillip Nelson as Executo<sup>rs</sup> to the last will & Testament of the late Joseph Jewet of Rowly deceased Defend<sup>ts</sup> in an action of the case for breach of Articles or agreement made bearing date the. 30<sup>th</sup> day of Aprill 1653. & bond of Fifteen hundred pounds thereupon reference thereto being had amply doth & may appeare for not paying the saide Bozoon Allen his just portion & right due to him by virtue of his late Father's will; as also by virtue of the late Anne Allen his late mother's will according to the abouementioned Articles & bond with all just interest & all other

due damages sustained according to Attachm<sup>t</sup> Dat. Aprill: 22<sup>th</sup> 1674. . . . The Jury . . . founde for the plaintife the Forfiture of a bond of Fifteen hundred pounds sterling & costs of Court. The Court on request of the Defend<sup>ts</sup> May: 21: 74 upon their Adjournm<sup>t</sup> after hearing both parties chancered this bond to two hundred & seventy pounds & costs of Court with res[pec]t to Bozoons portion & declare the bond stands good to secure m<sup>r</sup> Rawson the surviving Overseer from the demands of the other of m<sup>r</sup> Allens children.

Execucion issued June 4<sup>th</sup> 1674. [221]

[There are seventy-six documents in S. F. 1389 on this and the related cases of Allen v. Whipple and Waite v. Whipple, which were begun in the County Court at Ipswich. Many of these documents are printed in Records and Files of the Quarterly Courts of Essex County, v. 387-95.]

VSHER &<sup>a</sup> ags<sup>t</sup> GREENOUGH

Hezekiah Vsher sen<sup>r</sup> Cap<sup>t</sup> William Davis, John Hull Peter Lidgett Sammuell Shrimpton & Peter Sergeant Attourny to Phillip French Owners of seven eight parts of Ship Blessing plaint<sup>s</sup> ags<sup>t</sup> William Greenough sen<sup>r</sup> of Boston Marriner Defend<sup>t</sup> in an action of the case for not giving to s<sup>d</sup> Owners a just & true account of the earnings of s<sup>d</sup> Ship from London to New-England in the yeare 1673 & all due damages according to Attachm<sup>t</sup> Dat. Aprill: 23<sup>th</sup> 1674. The plaint<sup>s</sup> withdrew their action upon the Defend<sup>ts</sup> promiss to repay them their Entry mony.

VSHER &<sup>a</sup> ags<sup>t</sup> GREENOUGH

Hezekiah Vsher sen<sup>r</sup> Cap<sup>t</sup> William Davis John Hull Peter Lidgett Sammuell Shrimpton & Peter Sergeant Attourny to Phillip French. Owners of seven eight parts of Ship Blessing whereof William Greenough sen<sup>r</sup> was ma<sup>r</sup> plaint<sup>s</sup> ags<sup>t</sup> William Greenough sen<sup>r</sup> Defend<sup>t</sup> in an accion of the case for non paiement of their just dividends of Eleven hundred & sixty pounds or thereabouts in London, which summe was received there by saide Greenough for freight of goods &c in the saide Ship from New-England to London in the yeare. 1672. as by his acco<sup>t</sup> given in appeares & all due damages according to Attachm<sup>t</sup> Dat. Aprill. 23<sup>th</sup> 1674. The plaint<sup>s</sup> withdrew their action upon the Defend<sup>ts</sup> promiss to repay them their entry mony.

DEANE &<sup>a</sup> ag<sup>t</sup> GIFFARD

Thomas Deane & John Wensly Attournies to Thomas Breedon plaint<sup>s</sup> ags<sup>t</sup> John Giffard of Lynn Defend<sup>t</sup> in an accion of the case for the Forfiture of a bond of two hundred pounds in mony bearing date the sixth of Aprill 1670: by not paying of One hundred pounds in mony according to the condicion thereunto annexed with interest for the same & all other due damages according to Attachm<sup>t</sup> Dat: March 31<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint<sup>s</sup> the Forfiture of a bond of two hundred pounds mony & costs of Court. The Magistrates at the request of the Defend<sup>t</sup> chancered this bond to One hundred seventeen pounds five shillings mony & costs of Court being twenty eight shillings two pence.

Execucion issued May 8<sup>th</sup> 1674.

SMITH ag<sup>t</sup> GOOLD

John Smith of Boston plaint. against Ensigne John Goold of Topsfeild Defend<sup>t</sup> in an action of the case for not Satisfying of a bond of twenty pounds under the hand & Seal of the saide Goold & due damages according to Attachm<sup>t</sup> Dat. March 5<sup>th</sup> 167<sup>3</sup>/<sub>4</sub>. The accion being called The plaint. appeared The Defendant was called severall times; also Roger Rose his Surety being called to bring him in according to his bond; but neither of them appearing The Court declared theire bond forfeited [ 222 ] and Order the action to proceed to tryall; & if the case bee founde for the plaint. judgment to bee entred against principall & Surety & Execucion to issue out accordingly & to bee in force against the Surety as well as the principall for one month after judgment given according to Law: . . . The Jury . . . founde for the plaintife the Forfiture of a bond of twenty pounds mony & costs of Court.

L<sup>t</sup> John Smith y<sup>e</sup> pl<sup>t</sup> personally appeared in the office June 20<sup>th</sup> 1674: and acknowledged he had received full satisfaction for this Judgement.

Is<sup>a</sup> Addington, Cler

## PEIRCE to GIBBS

Nehemiah Peirce personally appeared in Court Aprill: 28<sup>th</sup> 1674. & acknowledged a judgment against himselfe & Estate to Benjamin Gibbs for eight pounds thirteen shillings & six pence in mony.

Execucion issued July: 22: 1674.

## Freemen Sworn

Daniell Lovet & Joseph Stevens of Mendon tooke the Oath of Freedom of this Colony.

## Freeman Sworn

James Bates of Hingham tooke the Oath of Freedom

Grandjury discharg<sup>d</sup>

The Grandjury brought in theire bill of presentments Aprill: 28<sup>th</sup> & were discharged.

## Freeman Sworn

Abraham Staple of Mendon tooke the Oath of Freedom.

STEVENS Fined 5<sup>li</sup>

Thomas Stevens bound over to this Court to answer for his committing Fornication with his now wife (Margaret formerly Margaret Forly) before marriage shee being now with Childe by Fornication all which hee Owned in Court. The Court Sentenced him to bee whip't with Fifteen stripes & his wife to bee whip't with ten stripes within one month after her next delivery of Childe or to pay five pounds in mony fine to the County & fees of Court standing committed till the Sentence bee performed & to give caution to the Selectmen of Boston to save the Town from charge or to remove with his wife to Newberry whereto shee doth belong.

SPRAGUES Sent<sup>a</sup>

Jonathan Sprague of Mendon bound over to this Court to answer for his contemning the Ordinance of baptisme vilifying & reproaching m<sup>r</sup> Emerson the Minister reproaching & scandalizing the Magistrates for his Lascivious carriages & attempting the chastity of Matitha Aldridge & Huldah Thayre The Court upon hearing & due consideration of the case Sentenced the saide Sprague to bee severely whip't with thirty stripes & to pay ten pounds in mony as a fine to the County & charges of prosecution & fees of Court standing committed untill the sentence bee performed. The saide Sprague being called to hear his Sentence declared made noe answer his Sureties were called to bring him in; but neither of them appearing The Court declared theire bond forfeited. [223]



## Order for Coll: CROWN's departure

This Court taking into their consideration that Colonell William Crown hath lived here a considerable time from his wife judge meete to Order that the saide Colonell do take passage for England & return thither to his wife by the next opportunity of Shipping after these Ships that are now ready to sail under the penalty of twenty pounds according to Law.

## Freemen Sworn

Jsaac Lobdell Sampson Shoare Thomas Loring John Loring & Benjamin Loring all of Hull tooke the Oath of Freedom of this Colony.  
James Vales of Medfeilde tooke the Oath of Freedom.

Mr John Joyliffe & Penn Townsend both of Boston tooke the oath of Freedom.

## Freemen Sworn

Thomas Andrews of Hingham tooke the Oath of Freedom  
William Davis & Thomas Bacon both of Roxberry tooke the Oath of Freedom.

Hingham Selectmens Presentm<sup>t</sup>

The Selectmen of Hingham being presented by the Grandjury for not rateing all their Lands according to Law The presentm<sup>t</sup> being called; Cap<sup>t</sup> Joshua Hubbard Ensign John Thaxter & some others of the Select men appeared to answer the presentm<sup>t</sup> John Tower sen<sup>r</sup> of Hingham appearing as an Evidence to this presentm<sup>t</sup> who also did occasion it to be made The Court upon hearing what hee could say in the case judge that hee had noe occasion to make such a presentm<sup>t</sup> & to put the Select men to the trouble of comming up & dismiss the presentm<sup>t</sup> & a judge & Order the saide Tower to pay the s<sup>d</sup> Selectmen their charges of attending the Court.

## FLOOD &amp; BELCHORS discharge

Henry Floode & John Belchior upon due proclamacion made were discharged from their bonds of good behavior

EVELYN discharg<sup>d</sup> from Traynings

Silvester Evelyn of Boston upon certificate from Major Thomas Clarke was discharged from Ordinary Treynings hee paying six

shillings in mony yearely to the use of the Company & keeping Armes according to Law.

#### HANNA TOWER Fin<sup>d</sup>: 50<sup>s</sup>

Hanna Tower of Hingham convict in Court by her own confession of committing Fornication with Joseph Cowell by whome shee hath had a bastard Childe The Court Sentenced her to bee whip't with fifteen stripes or to pay Fifty shillings in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed.

#### Committee for a division of m<sup>r</sup> NATH: GLOVERS Estate

Two of the Children of the Late m<sup>r</sup> Nathaniell Glover deceased; who are now of age & m<sup>r</sup> Anthony Checkly as guardian to the third Childe being under age appearing in Court & moving the Court to Order a [ 224 ] Settlement of the Estate Late the saide Glovers: The Eldest sonn (with allowance of the Court made choise of Ensigne Richard Hall, the other Childe with the guardian made choise of Joseph Homes the Court appointed Cap<sup>t</sup> Hopestill Foster as a third man being all three of Dorchester to bee a Committee, who are hereby Empoured to divide the saide Glovers late Estate into two equall parts & to make a division of one of the saide parts into two equall parts again & to make theire return to the next Court of this County of what they doe herein; This Committee are thus Empoured as aboues<sup>d</sup> in case the saide Children with the guardian doe not agree upon a divition of the saide Estate amongst themselves to theire mutuall Satisfaction by the last day of May next following

Endorst upon the above Order as follows

#### Divicion of NATH: GLOVERS Estate

Dorchester 1<sup>st</sup> of May 1674. The parties concerned in the order of this Hono<sup>rd</sup> Court on the other side repaired to Dorchester & prevayling with the Committee appointed therein to accompany them to the dwelling house & Land of the Late m<sup>r</sup> Nathaniell Glover whereon a veiw of the Land and after severall proffers & considerations made between the eldest sonn of the saide Nathaniell Glover & the other Children concerned with the full consent & approbacion of the

saide Committee It was amicably & fully agreed consented to & concluded that Nathaniell Glover the eldest sonn should haue & enjoy to him & his heires the dwelling house & Land adjoining thereto the full breadth to the sea & dead Low water marke all the land fenced in running from thence up to the highway or roade Leading to Dorchester mill being fourteen acres more or less with the second divition or wood Lot lying for thirty six acres bee it more or Less into the woods And that the thirty six acres of Land right against the saide Nathaniells division on the other side of the highway bee the same more or less with the first divition of wood Lot Lying in Dorchester common next unto the saide pasturing bordering on that highway leading from Ensigne Halls fence to the mill and also the third divition of the wood Lott being a thirty six acres with all the wood & trees thereupon lying about two miles from the thirty six acres of pasture Land fenced in, in all Lying for One hundred & Eighty acres more or less to bee & belong to W<sup>m</sup> Rawson in right of Ann his wife & to John Glover the youngest sonn of the late Nathaniell Glover & their heires to bee in their own time equally divided between them & that the severall parcells of Salt Marsh over against or between the Late m<sup>r</sup> Newberry's Farme & Squantum Neck to bee equally divided between them, the saide Nathaniell Glover to haue the one halfe of the Meadows here or there & the other halfe to bee & belong to the saide W<sup>m</sup> Rawson & John Glover & their heires & soe the rest of the goods rents [ 225 ] and what else belonged to the saide Nathaniell Glover left under the managment of m<sup>r</sup> Habakkuk Glover to bee & belong to bee divided between them in like proportions as aboue. as witness y<sup>r</sup> hands the day & yeare abouewritten in pu<sup>s</sup>sence & with the approbacion of the saide Committee.

In pu<sup>s</sup>sence & with approbacion  
 Hopestill Foster }  
 Richard Hall } Committee  
 Joseph Homes }

Nathaniell Glover  
 Anthony Checkly  
 guardian to Jn<sup>o</sup> Glover  
 William Rawson

And is witnessed by  
 Tho<sup>s</sup> Hinckley sen<sup>r</sup>  
 Edward Rawson  
 John Richards

The Court approves of this Division and Order it to bee Recorded  
May 2<sup>d</sup>: 1674.

as Attests. Is<sup>a</sup> Addington Clerk.

[ This estate, which was valued at 550*l* at the decease of Nathaniel Glover in 1660 (S. F. 1350.2), produced an amazing amount of litigation. The earliest relevant documents are the will of John Glover, one of the Mary and John group who settled at Dorchester and an Assistant of the Colony, dated 26 January 1653 (S. F. 1350.8), and the inventory of his estate (S. F. 1350.11), which shows that it was a property worth fighting for.

The last Will of m<sup>r</sup> John Glover of Boston made as follow<sup>th</sup>

It being written the Earth is the Lords & the fulness thereof the habitable World & they that dwell therein Again J have cryed to thee Jehovah J have saide thou art my trust, my portion in the land of the living & Again none of us liveth to himselfe, neither doth any dye to himselfe, & J accordingly beleiving doe therefore also speake & unto god Say, J am thine & thou art mine & pray oh that J & mine the Souls that thou hast given mee, if wee live wee may live to thee, if wee dye wee may dye to thee, both if wee live & also if wee dye wee bee thine, and as for what else thou hast given mee to possess thou hast trusted mee to dispose, that thou wilt bee pleased to bee with mee in deviseing of it & bless it soe in their hands to whome J give it Amen

And first J will all former Wills bee Revocate And Whereas J have by Deed given unto my Sonn Thomas Glover all my lands in England with promiss they shalbee freed of my wives Dowre & that besides J haue promised to give him four hundred pounds & haue also promised to my Sonne Nathaniel to giue him soe much in good payment as would make the lands the which J delivered him worth four hundred pounds And haue also given to my Sonn Habakkuk that one halfe of the Newhouse in Boston neerest m<sup>r</sup> Webbs house with halfe of all the other houseing halfe of the yard & pitts in it & other accommadacions for tanning & promised to make it up four hundred pounds all these with all other my debts J will to be duely paide in the first place out of my goods, debts, due to mee & out of the profits of all my lands in Dorchester & Boston saveing my Wives dowre, not herein already exprest to bee given

And next unto these my Will is that my two Sonns John & Pelatiah shall haue either of them One hundred pound paide unto them out of my goods & out of the profits of my two Farnes on the further side of the River in Dorchester & out of the one halfe of my house yard, other houseing & tann pits not herein exprest to bee given to my Sonn Habakkuk assoone as my Wives necessary maintenance out of the aforesaide Estate will permit.

And further after these performed my Will is my beloved Wife relinquishing her right of Dowre in England shall have all the rest of my goods & all the profits of my two Farnes in Dorchester & of my afores<sup>d</sup> halfe house yard houseing & tanpits in Boston undisposed of for & during her Naturall life

And further that my Sonn Habakkuk shall haue the saide halfe of my house in Boston next Goodman Hudsons with the halfe of the yard & other houseing & tan pits, my Sonn Habakkuk paying within one yeare to my Sonn Thomas Glover



ten pounds & to my Sonn Nathaniel Glover Forty pounds & to Harvard Colledge at Cambridge for & towards the maintenance of a Fellow there five pounds a yeare for ever & if my beloved Wife can spare to give the saide five pound a yeare in her life time J doubt not but Shee will give it And of this my last Will J make & ordaine my well beloved Wife my sole Executor desiering my respected loving Freinds m<sup>r</sup> Richard Mather & m<sup>r</sup> Henry Withrington as OverSeers to advise & further the performance of this my Will: Now o god as for mee let mee see thy face in Righteousness J shall haue sufficient in the awaking of thine image; as for my Children with them which J leaue behinde mee o that thy grace & peace may bee and as for thy Majesty to thee bee glory & might both now & for the day of Eternity Amen

Jf my saide Sonns John & Pelatiah shall haue occasion to sell m<sup>r</sup> Newberry's Farme, my desire is it bee sold to my Sonn Nathaniel if hee desire to buy it

Written with my own hand this eleventh day of April 1653

John Glover

Vpon further consideration of what my Sonns John and Pelatiah haue already received in theire Education my Will & minde is that after the decease of my beloved Wife they the saide John & Pelatiah shall haue and receive out of my two Farmes in Dorchester either of them the Summe of two hundred pounds; which Summe of Four hundred pounds being first paide unto them the saide John & Pelatiah, J doe hereby give Reversion & inheritance of the saide two Farmes unto my Sonns Habakkuk John Nathaniel & Pelatiah & to theire heires for ever, to bee equally devided amongst them in four severall partts & that this is my Will J haue caused this Codicell to bee annexed & afixed to my Will & Testament as part thereof & haue thereunto put my hand this. 26<sup>th</sup> day of the Eleventh month 1653.

John Glover

Witnesses hereof

The Will itselfe with these words enterlined saveing my wives Dowre with the Coddicel to both which hee hath Subscribed his Name was acknowledged by the saide m<sup>r</sup> John Glover to bee his last Will & Testament this. 26<sup>th</sup> of. 11<sup>th</sup> m<sup>o</sup> 1653 before me:

William Hibbins

The 9<sup>th</sup> of Feb<sup>ro</sup> 1653.

m<sup>r</sup> Habakkuk Glover appeared before the Magistrates & presented this aboue & within written to bee the last Will & Testament of his Father m<sup>r</sup> John Glover deceased m<sup>r</sup> William Hibbins being a Witness thereunto being deposed Saying that hee saw the saide m<sup>r</sup> John Glover Signe the aboue mentioned pu<sup>r</sup>mises & that when hee Signed it hee heard him publish it as his last Will & Testament & that then hee was of a sound disposing minde when hee Signed it, which the Magistrates approved of.

present the Dep<sup>t</sup> Gov<sup>r</sup>

m<sup>r</sup> Hibbins  
Recorder

. . . true Coppie . . . Is<sup>a</sup> Addington Cler

S. F. 1350.11

An Injventory of the Goods and Chattels of m<sup>r</sup> John Glover of Boston deceased, prized the 6<sup>th</sup>: 2: 53 [54] at his farme in Dorchester beyond Naponset now in the occupation of John Gill & Roger Billing by vs whose names are underwritten.

Imprimis, The farme house, barne, out howsing Vpland broken vp pasture with meadow there unto belonging . . . . .	700:00:0
Jt in wheate 130 bushels at 5 <sup>s</sup> per bush. Comes to in all . . . . .	32:10:0
Jt in Oates: 40 bushels at [2 <sup>s</sup> 6 <sup>d</sup> ] per bush . . . . .	5:00:0
Jt in Indian Corne at 3 <sup>s</sup> per bush . . . . .	45:00:0
Jt 4 mares at 20 <sup>l</sup> per mare Comes to . . . . .	80:00:0
Jt one Stone horse . . . . .	16:00:0
Jt one young mare 2 yeares old . . . . .	16:00:0
Jt. Two young Colts at 15 <sup>l</sup> both. the halfe being John Gills . . . . .	7:10:0
Jt: 4 Oxen at 16 <sup>l</sup> per yoke . . . . .	32:00:0
Jt. 2 Oxen more . . . . .	14:00:0
Jt. 9 Cowes. 6 of them having Calues & three being at hand to Calue 5 <sup>l</sup> 5 <sup>s</sup> per Cow Comes to . . . . .	47:05:0
Jt: 10 Cowes Some with Calfe and Some not at 5 <sup>l</sup> per Cow Comes to . . . . .	50:00:0
Jt. 3 Bulls: one 3 <sup>l</sup> : 2 at 2 <sup>l</sup> 6 <sup>s</sup> per bull . . . . .	8:00:0
Jt: 2: in Calfe heifers at 4 <sup>l</sup> 10 <sup>s</sup> per heifer . . . . .	9:00:0
Jt. 6 young beasts: at 2 <sup>l</sup> 10 <sup>s</sup> per beast . . . . .	15:00:0
Jt one old Cow . . . . .	3:05:0
Jt. 5 heifers at 40 <sup>s</sup> per heifer . . . . .	10:00:0
Jt 4 young bullocks one with another . . . . .	15:00:0
Jt: 2. young heifers both togeather . . . . .	6:00:0
Jt. part in 7: Calues 30 <sup>s</sup> per Calfe . . . . .	5:05:0
Jt. part in Swine at 20 <sup>s</sup> . . . . .	10:00:0
Jt: part in Twelue piggs [worn] . . . . .	1:06:8
Jt: 4 ox Chaines at 6 <sup>l</sup> 8 <sup>d</sup> per Chaine . . . . .	1:06:8
Jt: one old Plough . . . . .	0:08:0
Jt. one Jndian plough . . . . .	0:08:0
Jt one whipsaw . . . . .	[0:10:0]
Jt. in 33 harrow pins & old plow Jrons . . . . .	[ ]:16:0
Jt. an old pott & 4. paire vnshod wheels at . . . . .	[1]:06:8
Jt. 2 yoakes one Cleauer & other Jrons for a horse Cart . . . . .	0:12:0
Jt. 2 muskets. 2 Swords 2 bandaleers . . . . .	2:07:4
Jt. 6. Coverlidds . . . . .	2:02:0
Jt. 3. Ruggs . . . . .	1:04:0
Jt one old Rugg . . . . .	0:05:0
Jt one old Cwilt . . . . .	0:02:0
Jt. 3 Chafe beds . . . . .	0:18:0
Jt. 1. feather pillow & old bolsters . . . . .	0:03:0
Jt 3 bedsteads . . . . .	0:18:0
Jt. 1 axle tree ring & pottracks . . . . .	0:03:6
Jt. 1 frame table & a meale trough . . . . .	0:13:0
Jt: one Seate . . . . .	0:06:8
Jt: 2 bedsteads . . . . .	0:05:0
Jt one halfe bushel measure . . . . .	0:03:0
Jt 2 old Sythes, one mattock one Jron 1 plow Chaine & old axe . . . . .	0:13:0
Jt in Poultry. 10 henns . . . . .	0:06:8
Jt one hammer . . . . .	0:01:4
Jt in old Sickles . . . . .	0:02:6
Jt an old Coope . . . . .	0:02:0

Jt one boate and grapling . . . . .	3:10:0
Jt one Cannow . . . . .	2:00:0
Jt 1 harrow of 50 pins then at faxons farme . . . . .	1:00:0
	<u>1151:17:0</u>

An Inventory of the Goods and Chattells of m<sup>r</sup> John Glover of Boston deceased prized, the 6<sup>th</sup> of the 12<sup>th</sup> 1653 at his farme in Dorchester behinde Naponset now in the occupation of Nicholas Wood, by vs. whose names are vnderwritten.

Impr. The farme house, Barne out housing vpland, broken vp & un- broken vp & all meadow lands thereunto belonging . . . . .	350:00:0
Jt. 3 yoake of Oxen; at 15 <sup>l</sup> per yoke . . . . .	45:00:0
Jt. one yoake of young oxen . . . . .	12:00:0
Jt one old mare . . . . .	16:00:0
Jt one halfe of a young mare 3 yeares old 8 <sup>l</sup> 10 <sup>s</sup> & halfe a yearling 5 <sup>l</sup> both . . . . .	13:10:0
Jt. 10 acres of Rye growing Esteemed at 40 <sup>s</sup> per acre Comes to . . . . .	20:00:0
Jt in wheate 70 bushels: at 5 <sup>s</sup> per bush . . . . .	17:10:0
Jt in Rye 30 bushels: at. 4 <sup>s</sup> per bush . . . . .	6:00:0
Jt one Cart & vnshod wheels and pins . . . . .	2:00:0
Jt 2 paire of plow Jrons: 12 <sup>s</sup> a p <sup>r</sup> both . . . . .	1:04:0
Jt. 2 harrows 13 <sup>s</sup> a p <sup>r</sup> both . . . . .	1:06:0
Jt. 5 Chaines at 6 <sup>[s]</sup> 8 <sup>d</sup> per Chaîne Comes to . . . . .	1:13:4
Jt. 4 Oxe yoaks. 3 <sup>s</sup> per yoke, & one p <sup>r</sup> of Copps at 2 <sup>s</sup> both . . . . .	0:14:0
Jt in Rent for 9 acres of land at 8 <sup>s</sup> per acre Comes to . . . . .	3:12:0
Jt in Rent for. 3 Cows at 20 <sup>s</sup> per Cow apiece Comes to . . . . .	3:00:0
Jt. one p <sup>r</sup> of pottracks . . . . .	0:02:0
Jt. 3 Cowes old ones . . . . . at	12:00:0
	<u>505:11:4</u>

An Inventory of the Goods and Chattells of m<sup>r</sup> John Glover of Boston deceased as they were prized the 7<sup>th</sup> of the (12) 53: at his dwelling home in Boston, by vs whose names are vnderwritten.

Impr. That part of the house, wherein m <sup>r</sup> Glover now dwelleth, with the proportionable part of lands & appurtenances thereunto be- longing prized at . . . . .	300:00:0
Jt. in Wearing apparel . . . . .	17:00:0
Jt 3 yards. of kersy. at 9 <sup>s</sup> per y <sup>d</sup> . . . . .	1:07:0
Jt a piece of Coloured fustian . . . . .	1:12:0
Jt 26 y <sup>ds</sup> of Cotton Cloth at 2.8 <sup>d</sup> per y <sup>d</sup> Comes to . . . . .	3:09:4
Jt 5 y <sup>ds</sup> of white kersy. at 3.6 <sup>d</sup> per y <sup>d</sup> . . . . .	0:17:6
Jt 3 yards red broad Cloth at 16 <sup>s</sup> per y <sup>d</sup> . . . . .	2:08:0
Jt 5½ y <sup>ds</sup> pennestone at 4 <sup>s</sup> per y <sup>d</sup> . . . . .	1:02:0
Jt 3 yards of gladen at 3.4 <sup>d</sup> per y <sup>d</sup> . . . . .	0:10:0
Jt in Naquary & Lynen . . . . .	10:14:6
Jt one bed boulster & Cloathes . . . . .	7:00:0
Jt in Some old things in the little Chamber . . . . .	1:00:0
Jt one bedstead & feather bed, boulster, Coverlides & blankets & pillows . . . . .	8:00:0
Jt. one bedstead & Cloathes . . . . .	3:00:0
Jt one wheele . . . . .	1:17:0
Jt. one bed . . . . .	2:10:0

Jt in muskets Swords & other armes . . . . .	4:14:0
Jt in 2 Chaires & 4 Stooles . . . . .	2:00:0
Jt. 1 Table Seate & Carpet . . . . .	1:08:0
Jt one bedstead, feather bed, boulster Curtains & Coverings . . . .	10:00:0
Jt 6 Chaires & 2 Stooles . . . . .	1:00:0
Jt. 7. Cuishions . . . . .	1:03:4
Jt a Small press & Chest . . . . .	0:16:0
Jt [in] Siluer plate . . . . .	6:06:8
Jt. in pewter dishes 43 <sup>s</sup> & other vessels . . . . .	4:03:0
Jt. in brasse potts & other brazen. vessels . . . . .	5:04:0
Jt in Wooden vessels of seu[er]al sorts . . . . .	1:06:0
Jt in a Seat & Chaire & a Stoole & Small table in the kitchen . . .	0:68:0
Jt. 3. Sives . . . . .	0:04:0
Jt in Andirons & grate & other Jron things & a p <sup>r</sup> of bellows . . . .	2:06:6
Jt in shoos of Several Sizes . . . . .	3:02:0
Jt in bookes English & Lattine . . . . .	4:00:0
Jt in barly 110 bush at 5 <sup>s</sup> per bush . . . . .	27:10:0
Jt one Clock & warming pan . . . . .	3:08:0
Jt 16 bush of wheat at 5 <sup>s</sup> per bush . . . . .	4:00:0
Jt in dry leather . . . . .	102:00:0
Jt. 415. hides in the barke . . . . .	600:00:0
Jt. 45 hydes in the lime at 15 <sup>s</sup> per hide . . . . .	33:15:0
Jt. 313 West Jndia hydes . . . . .	187:00:0
Jt 15 hides in the lime . . . . .	11:05:0
Jt 500 weight of basket . . . . .	4:10:0
Jt in barke . . . . .	10:00:0
Jt. boards plancks: shingle & Sawed timber & one grindingstone . .	6:00:0
Jt in the mill & the horse . . . . .	19:00:0

## Debts oweing

Jmpr By William Phillips at the Ship Taverne in Boston . . . . .	97:00:0
By Goodman Coleman of Boston shoemaker . . . . .	4:00:0
By William Robinson for a Steere sold him by John Gill for m <sup>r</sup> Glovers vse . . . . .	4:15:0
By m <sup>r</sup> Thomas Lake of Boston for principle forbearance & not paying in old England . . . . .	60:00:0
By m <sup>r</sup> James Attwood . . . . .	20:00:0
By m <sup>r</sup> Valentine Hill p[rincipa]ll & for not paying in old England . . .	25:00:0
By Cap <sup>t</sup> John Leveret . . . . .	3:00:0
By William Shattock . . . . .	14:13:4
By Joseph Jewet of Rowly . . . . .	214:19:1
By Sampson Mason of Dorchester . . . . .	7:10:0
By Cap <sup>t</sup> Gookin to pay in England . . . . .	10:00:0
More by Cap <sup>t</sup> Gookin . . . . .	3:13:0
By m <sup>r</sup> Holeman of Dorchester . . . . .	30:07:0
By m <sup>r</sup> Thomas Broughton of Boston . . . . .	100:00:0
By John Gornel . . . . .	4:00:0
By m <sup>r</sup> Rawson . . . . .	2:00:0

1604:08:11



Jt. 4 barrels: of Porke at 4 <sup>l</sup> : 10 <sup>s</sup> per barrel . . . . .	18:00:0
Jt. 1. hogshead of. Beefe . . . . .	7:00:0
Jt. 2. hogsheads of Mackrel at 40 <sup>s</sup> per hh <sup>d</sup> . . . . .	4:00:0
Jt one presse for Cloathes . . . . .	0:10:0
Jt in plancke & boardes . . . . .	15:00 [torn]
Jt 5 Servants at 8 <sup>l</sup> per Servant . . . . .	[torn]

Humphry Athert[on]

John W[iswall]

John [Smith]

[Various endorsements and attestations]

See Rawson v. Glover, below, p. 472, and Rawson v. Billing, below, p. 543.]

TIMBERLAKE Fin<sup>d</sup> 10<sup>li</sup>

Henry Timberlake bound over to this Court to answer for his abusive & riotous carriages towards severall persons pretending himselfe to bee empoured to press men for the service of the Country in their Late fitting out against the Dutch. The Court: on due hearing of the case Sentenc<sup>d</sup> him to bee whip't with thirty stripes or to pay twenty pounds in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed: The Court afterwards upon his petition remitted halfe his Fine in case the other halfe bee paid by Thursday next or else then to bee whip't.

BLACKMAN Fin<sup>d</sup> 5<sup>li</sup>

William Blackman committed to prison to answer for his riotous & abusive carriages towards severall persons pretending himselfe to bee empoured to press men for the Service of the Country in their Late fitting out against the Dutch. The Court on due hearing of the case Sentenced him to bee whip't with fifteen stripes or to pay ten pounds in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed The Court afterwards upon his petition remitted halfe his Fine provided the other halfe bee paid by thursday next or else then to be whipped.

COWELL Ordered to pay 3<sup>s</sup> m<sup>o</sup> per weeke to HANNA TOWER

Joseph Cowell bound over to this Court to answer what should bee alleaged against him by Hanna Tower of Hingham for committing Fornication with her by whome shee hath had a bastard Childe of which shee made Oath in Court & hee did not deny it The Court declares the saide Cowell to bee the reputed Father of the Childe

according to Law & Order him to pay three shillings per weeke in money to the saide Hanna Tower towards the maintenance of the s<sup>d</sup> Childe untill the Court take further order & to give in bond with Sureties of Fifty pounds for his good behavio<sup>r</sup> till the next Court of this County & then to appeare standing committed untill hee give in such bond. accordingly the s<sup>d</sup> Joseph Cowell as principall in 25<sup>th</sup> & Nehemiah Peirce & John Cowell as Sureties in £:12:10<sup>s</sup> apeece acknowledged themselves respectively bound to the Treasuro<sup>r</sup> of this County upon condicion aforesaide. [226]

[ LANGDEN and BARKER discharged ]

John Langden & Edward Barker upon due proclamacion made were discharged from their bonds of good behavio<sup>r</sup>

#### Settlement of TOLBY'S Estate

For the division & Settlement of the Estate of the late Stephen Tolby deceased The Court sets out & assignes to the widdow and Relict of s<sup>d</sup> Tolby all the movables as her thirds & shee to have the use of the house & Land towards the bringing up of the saide Tolby's Children till they come of age to choose guardians Shee keeping the house in good repaire.

#### PRAY presented

Joanna Pray of Brantery being presented by the Grandjury for severall misdemeano<sup>rs</sup> The presentm<sup>t</sup> falling for want of prooffe The Court dismissed her.

#### SMITH presented.

The wife of Christopher Smith being presented upon suspition of selling wine strong beere & Liquo<sup>rs</sup> The presentm<sup>t</sup> falling for want of prooffe The Court dismissed her.

#### HOARE Fin<sup>d</sup> 3<sup>th</sup>

William Hoare, being presented for affronting the Clarkes of the Markett, hee Own<sup>d</sup> in Court that hee did resist them in taking away some of his bread; & that hee wrote that advertisem<sup>t</sup> in their Booke (left by them in his house) wherein they tooke an account of what bread they founde too light & whose it was with the exact weight thereof they testifying that in some places thereof wherein they had

entred the saide Hoares bread some ounces too light hee had altered it & made it soe many ounces over weight The Court on due consideration of the same Sentenc<sup>d</sup> the s<sup>d</sup> Hoare to pay five pounds in mony as a fine to the County & fees of Court standing committed untill hee performe this Sentence. Afterwards upon his humble petition & acknowledgm<sup>t</sup> the Court remitted Forty shillings of his saide fine.

#### LORIN Sentenc<sup>d</sup>

John Lorin bound over to this Court to answer for his committing of Fornication with Margery Sparkes by whome shee is now with Childe The saide Lorin Own<sup>d</sup> in Court that hee had fellowship with the saide Sparkes severall times & that the last time was about the middle of last July; but would not Own the Childe shee now goeth withall thinking shee had overgone the usuall time & refused to marry w<sup>th</sup> her The Court upon due consideration hereof Sentenc<sup>d</sup> the saide Lorin to bee severely whipped with thirty stripes & to pay fees of Court; as also to give in bond of 60<sup>li</sup> with Sureties for his appearance at the next Court of this County and abiding the order of the Court; or to bee continued in prison till the Court of this County next after the s<sup>d</sup> Sparkes her delivery of the Childe shee now goeth withall standing committed untill hee performe this Sentence.

#### JUDKIN admonish<sup>d</sup>

Sammuell Judkin being presented for his being founde by the Constable in the house of Christopher Smith at an unseasonable time of a Saturday night & suspected to haue been a drinking there; hee Own<sup>d</sup> in Court that hee was soe founde there by the Constable but denyed his drincking there. [227] The Court Sentenced him to bee Admonished & to pay fees of Court.

#### GOLD admonished

Sammuell Gold being presented for his being founde by the Constable at an unseasonable time of the night at the house of Christopher Smith being a Saturday night & suspected to haue been drincking there The saide Gold Own<sup>d</sup> in Court his being soe founde by the Constable but denyed his drincking The Court on consideration thereof Sentenced him to bee admonished & to pay fees of Court.

## STEWARD Admonish't

Hanna Steward being committed to prison upon suspicion of Stealing severall goods from her Master Jonathan Bridgham; which upon hearing could not bee fully proved ag<sup>t</sup> her The Court Admonished her & Order her to pay fees of Court & prison & soe dismissed her.

STEVENS discharg<sup>d</sup>

Sarah Stevens committed to prizon upon her saying that she had Lyen with Christopher Lawson; which was fully evidenced against her; but shee denying in Court that shee had soe done The Court judging by her carriages & testimonies concerning her that shee was a distempered crazy woman discharged her.

## WALSEBEES discharge

The wife of David Walsebee of Brantery being presented for her Idleness & sottish carriage. upon hearing of the case The Court judge there is noe ground for the presentment & soe discharge her.

MATTHEWS Fined 40<sup>s</sup>

Jsaac Matthews being sent for by the Court to answer for his running away & absenting himselfe from the Service of the United Colonies. hee Own<sup>d</sup> in Court that hee was shipped with Cap<sup>t</sup> Mosely & obtained Leaue from him to come on shoare but pretended hee had a swelling in his face soe returned noe more on board. The Court Sentenc<sup>d</sup> him to pay Forty shillings in mony as a Fine to the County & fees of Court standing committed untill the Sentence bee performed.

## COMBES Ordered to attend the Court

Peter Combes being sent for by the Court to answer for his running away & absenting himselfe from the Service of the United Colonies The saide Combes referred himselfe to the testimony of Cap<sup>t</sup> Mosely who not being then in Court: The Court Ordered the saide Combes to attend this Court upon their Adjournm<sup>t</sup> on the 21<sup>th</sup> of May next which hee Engaged to doe under the pœnalty of 05<sup>li</sup>.



Order ab<sup>t</sup> SERGANTS charges

William Sergeant Constable of Cape Ann making his complaint to this Court that hee could not obtain his charges which was allowed him by a former Court & Ordered to bee paide by m<sup>r</sup> Charles Gosfrit for his paines & expence in apprehending Thomas Daniell who had stohn seuerall goods from the saide Gosfrit & others & for his conveying the s<sup>d</sup> Daniell to Boston & securing of him & the goods [ 228 ] founde with him The Court allowes the saide Serjeant ten shillings towards the defraying of his expences in Looking after the saide charges & Order that soe much of the s<sup>d</sup> Gosfrit's goods which were founde with the saide Daniell now in the hands of Thomas Peck Late Constable bee disposed of to the s<sup>d</sup> Sergeant or some others as may Satisfy the saide Sergeant's charges with this additionall ten shillings.

m<sup>r</sup> OXENBRIDGE &<sup>a</sup> complaint & Order upon it.

M<sup>r</sup> John Oxenbridge m<sup>r</sup> James Allen & m<sup>r</sup> Anthony Stoddard Executo<sup>rs</sup> to the Last will & Testament of Richard Bellingham Esq<sup>r</sup> Late Gov<sup>r</sup> deceased, making theire complaint to this Court that m<sup>r</sup> Richard Wharton had unjustly molested & disquieted William Eustas tenant to the s<sup>d</sup> Executo<sup>rs</sup> in his possession of one of the Farmes Late the s<sup>d</sup> Governo<sup>rs</sup> lying at Winnisimmet formerly occupied by Nicholas Rise as tenant to the s<sup>d</sup> Govern<sup>r</sup> & turned the s<sup>d</sup> Eustas his goods out of dores without colour of Law or Lawfull Authority the saide Eustas affirming upon Oath in Court that m<sup>r</sup> Wharton had dispossessed him & turned out his goods which the s<sup>d</sup> Wharton also Own<sup>d</sup> The Court Orders that warrant issue out forthwith to the Marshall of Suffolke to deliver to the s<sup>d</sup> Eustas quiet & peaceable possession of the saide Farme house & Land thereunto belonging.

Explanacion of Court Order ab<sup>t</sup> m<sup>r</sup> Rock

As an Explanation of the Order of the County Court in Novemb<sup>r</sup> Last past respecting m<sup>r</sup> Joseph Rock his paiment unto the guardians of the Children of the Late Thomas Robbinson deceased what Estate is yet remaining in his hands formerly the Estate of m<sup>r</sup> John Coggan deceased (to which Estate hee was Administrato<sup>r</sup>) amounting to the Summe of three hundred Forty eight pounds thirteen shillings and

four pence as by his Account thereof given into Court. The Court doe declare their intent in the s<sup>d</sup> Order to bee that m<sup>r</sup> Rock reserve in his own hands two fifths parts of the saide Summe. Viz<sup>t</sup> one Fifth in right of his wife as given to her by her Late Father Coggans will the other Fifth as hee is guardian to one of the s<sup>d</sup> Robinsons Children which two fifths amounts to the Summe of One hundred thirty nine pounds nine shillings & four pence & to pay unto the other three guardians of the saide Robinsons Children the three other fifth parts thereof amounting to the summe of two hundred & nine pounds four shillings to each guardian his due proporcion of the s<sup>d</sup> Summe & m<sup>r</sup> Rock fulfilling the s<sup>d</sup> Order with this explanacion thereof is discharged from his bond for true Administration upon the s<sup>d</sup> Estate.

[The Order will be found on p. 343, above.]

#### Division & Setlement of JONATH<sup>a</sup> SHRIMPTONS Estate

For a division & Setlement of the Estate of the late Jonathan Shrimpton of Boston deceased The Court Orders that the saide Estate bee devided into three equall parts & doe assigne one third part thereof unto Mary the widdow & relict of the s<sup>d</sup> Shrimpton for ever as her Dowry the other two thirds are assigned to the two onely Children [229] of the saide Jonathan as their portions to bee equally divided between them The widdow to haue the emproeuement of the whole Estate towards the Education & charge of bringing up the Children till they come of age to choose guardians.

#### TRESCOTS discharge

William Trescott of Dorchester Adminfstrato<sup>r</sup> to the Estate of his brother Thomas Trescott deceased upon renouncing his claime of any debt due to him for disburstments made upon that Estate according to the ballance of his Account given into Court was discharged from his administracion.

#### MOULDER Fined 20<sup>s</sup>

Nicholas Moulder presented by the Grandjury for being founde by the Constable at two Quakers meetings at his the saide Moulder's house upon two severall sabbath dayes in Aprill last past: The s<sup>d</sup>

Moulder Owned the presentment in Court on consideracion thereof Sentenced him to pay twenty shillings in mony as a fine to the County according to Law & fees of Court standing committed untill hee should performe this Sentence The s<sup>d</sup> Moulder being ordered to attend the Court & not appearing when called to receive his Sentence The Court declared it a contempt & Order an attachm<sup>t</sup> to issue out for his appearance upon the Adjournment which accordingly did

CANN Fin<sup>d</sup> 40<sup>s</sup>

John Cann being Summoned to appeare before the Court to answer for his running away & absenting himselfe from the Service of the United Colonies on board the Catch Salisbury Cap<sup>t</sup> Mosely Command<sup>r</sup> The s<sup>d</sup> Cann appearing Own<sup>d</sup> in Court that hee entred himselfe with Cap<sup>t</sup> Mosely onboard the saide Catch & was on board two or three dayes but doubting of his pay came onshoare & tooke a voidage for Lynn The Court upon consideracion hereof Sentenc<sup>d</sup> him to pay Forty shillings in mony as a Fine to the County & Fees of Court standing committed untill the Sentence bee perform<sup>d</sup>

Order ab<sup>t</sup> LYNDONS Estate

Jn Answer to the petition of Mary Lyndon wife of Augustyn Lyndon & upon consideracion of what hath been charged upon the saide Lyndon by Ruth Read The Court Orders Deacon Henry Allen as hee is Attourny to the saide Augustyn Lyndon to reserve in his hands what monys goods or Estate hee hath under his custody or managment belonging to the saide Lyndon for the Supply of his wife & Family as the Court of this County shall from time to time order & that hee remit none of the Effects or produce of that Estate to the saide Lyndon without Order from the Court.

Attachm<sup>t</sup> Ordered ag<sup>t</sup> COALE

The Court Orders an Attachm<sup>t</sup> to issue out ag<sup>t</sup> George Coale for his appearance on the adjournm<sup>t</sup> of this Court. [230]

Attachm<sup>t</sup> Ordered ag<sup>t</sup> ALDRICH

Peter Aldrich of Mendon being Ordered to attend the Court to answer for severall misdemeanors as per Evidence brought into Court against him; but hee absenting himselfe & not attending when

called for The Court Ordered an Attachm<sup>t</sup> to issue out for his appearance at the next Court of this County.

#### Order for TUDERS departure

John Tudor being summoned to appeare before the Court to answer for his abiding in this Town of Boston contrary to the minde of the Selectmen & Order of Court for his departure The s<sup>d</sup> Tudor appearing declared to the Court that hee did intend suddenly to depart the Town This Court again Ordering him soe to doe & hereby confirme theire former Order.

#### LOVELLS bond Forfit<sup>d</sup>

John Lovell of Waymouth not appearing before the Court when called for to answer according to his bond taken by the Hono<sup>r</sup><sup>d</sup> Govern<sup>r</sup> of 200<sup>li</sup> himselfe & 200<sup>li</sup> his Sureties being Ordered by the Court of Assistants to answer according to the same at this County Court & his bond being continued to that end, after due calling of principall & Sureties The Court declared both theire bonds Forfited.

#### JONS bond Forfit<sup>d</sup>

John Jons bound over to this Court to answer according to his bond Dat. Feb<sup>ry</sup> 11<sup>th</sup> 1673 & Richard Tewell being his Surety neither of them appearing upon due calling The Court declared theire bond Forfited.

#### Court Adjourned

The Court Adjourned from Saturday the 2<sup>d</sup> to  
Thursday the 21<sup>th</sup> of May at nine a clock in the morning

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May 21<sup>th</sup> 1674 @

The Court met according to Adjournm<sup>t</sup>

Present

JN<sup>o</sup> LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>

SIMON BRADSTREET

EDW: TYNG

W<sup>m</sup> HOUGHTON

Majo<sup>r</sup> THO: CLARKE

} Esq<sup>rs</sup>

#### COMBES Fin<sup>d</sup> 40<sup>s</sup>

Peter Combes appearing before the Court upon theire former Sessions by virtue of a warrant to answer for his running away &



absenting himselfe from the Service of the United Colonies aboard the Catch Salisbury Cap<sup>t</sup> Sammuell Mosely Command<sup>r</sup> The saide Combes referred himselfe to the testimony of Cap<sup>t</sup> Mosely; who not being then present The Court enjoined the saide Combes to appeare again upon the Adjournm<sup>t</sup> when being called Cap<sup>t</sup> Mosely came in & gaue Evidence that the saide Combes was impressed by him for the aboue s<sup>d</sup> Service & did afterwards absent himselfe The Court on consideracion hereof Sentenc<sup>d</sup> him to pay Forty shillings in mony as a Fine to the County & fees of Court standing committed untill the Sentence bee performed The saide Combes appealed from the Sentence of this Court to the next Court of Assistants & himselfe as principall in Five pounds & John Matson [ 231 ] as Sureties acknowledged themselves respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Peter Combes shall prosecute his Appeal from the Sentence of this Court at the next Court of Assistants to effect & that in the meane time hee shalbee of good behavio<sup>r</sup>

#### DANDEY Fined 20<sup>s</sup>

John Dandey bound over to this Court to answer for his usurping authority & impressing Jacob Nash & others in his Majestie's Name for the Service of the United Colonies without any power soe to doe of which hee was convict in Court The Court Sentenced him to pay Forty shillings in mony as a Fine to the County with charges of prosecution & Fees of Court standing committed untill the Sentence bee performed: After which upon his humble petition the Court remitted twenty shillings of his Fine.

#### COALE Fin<sup>d</sup> 5<sup>li</sup>

George Coale bound over to answer his presentments for his meeting with severall other quakers upon two Lord's dayes in Aprill last past at the house of Nicholas Moulder at one of which meetings the saide Coale was found speaking: of which hee was convict in Court: The Court Sentenced him to pay Five pounds in mony as a Fine to the County according to Law & Fees of Court standing committed till the Sentence bee performed.

Order about the highway over the Forge damm at Brantery

There being complaint made to this Court that Richard Thayre of Brantery had obstructed & stopped up (by running a fence across) the highway from Manaticott over the Forge damm leading to the Southward: The Court on hearing what was saide in the case doe hereby Order & Empowre the Select men of Brantery to see that the obstructions of the saide highway bee removed & that it bee laide open as formerly & that the proprieto<sup>rs</sup> of the saide damm make the abouesaide way sufficient & safe both for passeng<sup>rs</sup> carts & cattle to the approbacion of the saide Selectmen by the next Court of this County under the pœnalty of ten pounds to bee by them Forfited to the County in case of default therein.

Freeman Sworn

Thaddeus Redding tooke the Oath of Freedom of this Colony.

BUCKMINSTER Sentenced

Sarah Buckminster widdow being sent for to appeare before the Court to answer for her committing of Fornication & having a bastard Childe: Shee Owned in Court that her husband had been dead about three yeares & that shee had a Childe of about six weekes old: The Court Sentenced her to bee whip't with ten stripes & Order the Selectmen of Boston to dispose of her into some good Family where shee may bee under Goverment.

Order for Sequestration of SPRAGUES Estate

Whereas Jonathan Sprague of Mendon was bound over to this Court to answer for seuerall notorious & hainous crimes & being upon his tryall at the first Session of this Court after a hearing of his case being called to heare the Sentence of the Court declared against him did not [ 232 ] appeare & thereby Forfited his bond & hath made an Escape from the hands of justice: The Court orders that warrant issue out to the Marshall to Attach Seize & Sequester the Estate of the saide Sprague soe that it may bee secured & Lye responsible to answer the Forfiture of his bond.

HICKSON Sentenc<sup>d</sup>. Fin<sup>d</sup> 40<sup>s</sup>

Walter Hickson bound over to this Court to answer for his keeping company & being too familiar with Mary Bedwell wife of Sammuell

Bedwell & other misdemeano<sup>rs</sup> & being convict thereof in Court The Court Sentenced him to bee whip't with fifeteen stripes or to pay Forty shillings & to sit in the stocks two houres & to pay fees of Court standing committed untill the Sentence bee performed And if at any time hereafter hee bee taken in company of the saide Mary Bedwell without other company to bee forthwith apprehended by the Constable & to be whip't with ten stripes.

#### BEDWELL'S Sentence

Mary Bedwell bound over to answer for her keeping company & being too familiar with Walter Hickson of which shee was convict in Court The Court Sentenced her to sit in the stocks two houres & to bee whip't with Fifteen stripes or to pay Forty shillings in mony as a Fine to the County and Fees of Court standing committed untill the Sentence bee performed & if at any time hereafter shee bee taken in company of the saide Walter Hickson without other company to bee forthwith apprehended by the Constable & to bee whip't with ten stripes.

#### THORN Fin<sup>d</sup> 5<sup>li</sup>

Mary Thorn bound over to this Court to answer for her selling strong beare & ale without Licence She Own<sup>d</sup> in Court that shee did sell strong beare upon a Trayning day: The Court Sentenced her to pay Five pounds in mony as a fine to the County according to Law & Fees of Court standing committed untill shee performe this Sentence.

#### WHEELER & PEIRCE Admonish't

Elizabeth Wheeler & Joanna Peirce being Summoned to appeare before the Court to answer for their disorderly carriage in the house of Thomas Watts being married women & founde sitting in other mens Laps with their Armes about their Necks The Court upon their acknowledgm<sup>t</sup> of their fault & promiss to avoide such Offences for time to come admonished them ordered them to pay Fees of Court & soe discharged them.

## RANDALLS Guardian

The Court appointed Cap<sup>t</sup> Edward Hutchinson guardian to William Randall sonn of Thomas Randall of Marblehead deceased, which hee accepted of & hath given security according to Law.

[ See case of Sands v. Hutchinson, below, p. 460.]

Roxbury Commission<sup>rs</sup>

The Court appointed m<sup>r</sup> John Pearpoint m<sup>r</sup> Joseph Dudley & m<sup>r</sup> Thomas Weld Commission<sup>rs</sup> to end small causes for the Town of Roxbury for the yeare Ensuing.

Weym<sup>o</sup> Commission<sup>rs</sup>

The Court appointed Cap<sup>t</sup> William Torrey L<sup>t</sup> Jn<sup>o</sup> Holbrooke & Deacon Thomas Dyer Commission<sup>rs</sup> to end small causes for the Town of Weymouth for the yeare Ensuing. [ 233 ]

## FAXTONS discharge from Trayning

Thomas Faxton of Brantery upon certificate from Cap<sup>t</sup> Richard Brackett was discharged from Ordinary Traynings upon his paiment of six shillings in mony a yeare to the use of the Company & keeping of Armes according to Law.

## JACKLENS discharge from Trayning

Edmund Jacklen by reason of his age & Lameness was discharged from ordinary Traynings in Cap<sup>t</sup> Tho: Savage his Company upon his paiment of six shillings in mony yearly to the use of the Company & keeping of Armes according to Law.

## PORTIC's discharge from Trayning

Robert Portice upon certificate from Cap<sup>t</sup> Tho: Savage was discharged from ordinary Treynings upon his paiment of five shillings in mony yearely to the use of the Company & keeping of Armes according to Law.

## PORTER's discharge from Trayning

Abel Porter by reason of his age was discharged from ordinary Traynings in Cap<sup>t</sup> William Hudson his company upon his paiment of six shillings in mony yearely to the use of the Company & keeping armes according to Law.



Order upon W<sup>m</sup> SALTERS Peticion

In Answer to the Petition of William Salter, for that the Select men of Milton refuse to pay him charges expended upon Dinah Silvester & her Childe during her imprisonm<sup>t</sup> & lying in there: which charge wass allowed of by the Court & Ordered for the saide Select men to pay by the Court in October last past: The Court upon his complaint hereof Order that Execucion issue forth against the saide Select men for the same upon the former Courts Order.

## Setlement of HOWARDS Estate

In Answer to the petition of Alice Howard Relict & Administratrix to the Estate of L<sup>t</sup> William Howard of Boston deceased, there appearing noe heire The Court Settles the Estate upon the widdow & Empower her to dispose of it.

[ The inventory of this estate is in S. F. 28746.]

Court Order ab<sup>t</sup> BOURNS Estate in Jn<sup>o</sup> CANNS hands

Whereas John Cann of Boston tooke to keepe an Orphant by name Elisabeth Bourne & also received the s<sup>d</sup> Orphants Estate & Engaged to giue in Security to the Court for the paiment of the saide Estate to the Orphant when shee should come of age: The Court Orders that the s<sup>d</sup> Cann giue in Security according to his Engagement by the next Court of this County or that then the Orphant & Estate bee called in & disposed of by the Court. [234]

## Licences &amp; Bonds. For Boston

Cap<sup>t</sup> William Hudson upon certificate from the Selectmen had his Licence renewed to keepe a house of Publique Entertainm<sup>t</sup> & to sell wine beere & brandy by retaile for the yeare ensuing: And himselfe as principall in ten pounds & Cap<sup>t</sup> William Wright & W<sup>m</sup> Kent as Sureties in five pounds apeice acknowledged themselves respectiuely bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Cap<sup>t</sup> Hudson shall observe the Laws title Inkeepers with all theire additions & that hee shall not retaile any Brandy to the Inhabitants of the Town to bee drunck in his house & that if hee sells Sider hee shall not sell it for more then two pence the quart.

John Viall upon Like certificate had his Licence renewed to keepe a house of publike Entertainm<sup>t</sup> & to sell wine & beere by retaile for the yeare Ensuing & himselfe as principall in ten pounds & Daniell Stone & John Woodmancy as Sureties in five pounds apeice were alike bound as aboue.

Cap<sup>t</sup> William Wright upon like certificate had his Licence renewed to keepe a house of publike Entertainm<sup>t</sup> & to sell wine & beere by retaile for the yeare ensuing & himselfe as principall in ten pounds & Cap<sup>t</sup> W<sup>m</sup> Hudson & W<sup>m</sup> Kent as Sureties in five pounds apeice were alike bound as aboue.

John Turnor upon Like certificate had his Licence renewed to keepe a house of publike Entertainm<sup>t</sup> & to sell wine & beere by retaile for the yeare ensuing & himselfe as principall in ten pounds & Cap<sup>t</sup> James Oliver and Marshall Richard Wayte as Sureties in five pounds apeice were alike bound as aboue.

William Kent upon like certificate had his Licence renewed to keepe a Cookes Shop & to sell wine & strong beere by retail for the yeare ensuing & himselfe as principall in ten pounds & Cap<sup>t</sup> James Oliver & John Turner as Sureties in five pounds apeice were alike bound as aboue.

John Frankes upon like certificate had his Licence renewed to keepe a Cookes Shop & to sell strong beere by retail for the yeare ensuing & himselfe as principall in ten pounds & Thomas Dewer & Isaac Woody as Sureties in five pounds apeice were alike bound as aboue.

Rebecca Winsor upon like certificate had her Licence renewed to keepe a Cookes Shop & to sell strong beere by retail for the yeare ensuing & Cap<sup>t</sup> James Oliver & James Bateman in ten pounds apeice acknowledged themselves bound to the Treasuro<sup>r</sup> of this County for Rebeca Winsor on condicion as aboue. [ 235 ]

John Keen upon Like certificate had his Licence renew<sup>d</sup> to Keepe a Cookes Shop & to sell strong beere by retail for the yeare ensuing & himselfe as principall in ten pounds & Cap<sup>t</sup> W<sup>m</sup> Hudson & W<sup>m</sup> Kent as Sureties in five pounds apeice acknowledged themselves respectuely bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Keen should observe the Laws title Inkeepers with all theire additions & that if hee sold Sider hee should not sell it for more then two pence a quart.

Joanna Courser upon Like certificate had her Licence renewed to keepe a house of publique entertainm<sup>t</sup> & to sell strong beere by retail for the yeare ensuing & herselfe as principall in ten pounds & Thomas Dewer & William Gibson as Sureties in five pounds were Like bound as aboue.

William Pollard upon Like certificate had his Licene renew<sup>d</sup> to keepe a house of publique Entertainm<sup>t</sup> for the yeare ensuing & to sell strong beere by retail & himselfe as principall in ten pounds & Cap<sup>t</sup> William Hudson & Cap<sup>t</sup> William Wright as Sureties were alike bound as aboue.

Edmund Jackson upon Like certificate had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> & to sell strong beere by retail for the yeare ensuing & himselfe as principall in ten pounds & Thomas Matson sen<sup>r</sup> & John Pease as Sureties in five pounds apeice were alike bound as aboue s<sup>d</sup>.

Widdow Vpshall upon Like certificate had her Licence renewed to keepe a house of publique Entertainm<sup>t</sup> & to sell strong beere by retail for the yeare ensuing & Thomas Bill & Francis Hudson bound themselves in ten pounds apeice for the principall & as Sureties on condicion as aboues<sup>d</sup>.

Francis Hudson upon Like certificate had his Licence renew<sup>d</sup> to keepe a house of publique Entertainm<sup>t</sup> & to sell strong beere by retail for the yeare ensuing & himselfe as principall in ten pounds & John Viall & Thomas Bill as Sureties in five pounds apeice were alike bound as aboues<sup>d</sup>.

Sammuell Norden upon Like certificate had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> & to sell strong beere by retail & himselfe as principall in ten pounds & Sammuell Emmons & William Gibson as Sureties in five pounds apeice were alike bound as aboues<sup>d</sup>.

William Norton upon Like certificate had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> & to sell strong beere by retail for the yeare ensuing & himselfe principall in ten pounds & Francis Hudson & Thomas Bill as Sureties in five pounds apeice were alike bound as aboues<sup>d</sup>. [236]

Clemont Gross upon Like certificate had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> & to sell strong beere by retail for the yeare ensuing & himselfe principall in ten pounds & Cap<sup>t</sup>

James Oliver & William Kent as Sureties in five pounds apeece acknowledged themselves respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Gross shall observe the Laws title Inkeepers with all theire additions & that if hee shall sell Sider hee shall not sell it for more then two pence per quart.

Robert Cox upon Like certificate had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> & to sell strong beere by retail & himselfe as principall in ten pounds & William Kent & John Sandys as Sureties in five pounds apeece were alike bound as abouesaide.

Nathaniell Bishop upon Like certificate had his Licence renewed to keepe a house of publique Entertainment & to sell strong beere by retail for the yeare ensuing & himselfe principall in ten pounds & Daniel Turill sen<sup>r</sup> & Marshall Richard Wayte as Sureties in five pounds apeece were alike bound as abouesaide.

Benjamin Phippen upon Like certificate had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> & to sell strong beere & keepe a Cookes shop for the yeare ensuing & himselfe as principall in ten pounds & Jn<sup>o</sup> Comer & John Orrice in five pounds apeece as Sureties were alike bound as abouesaide.

Thomas Saxton upon like certificate had Licence granted him to keepe a house of publique Entertainm<sup>t</sup> & to sell strong beere by retail for the yeare ensuing & himselfe as principall in ten pounds & Arthur Mason & John Synderland as Sureties in five pounds apeece were alike bound as abouesaide.

Thomas Matson jun<sup>r</sup> upon like certificate had Licence granted him to keepe a house of publique Entertainment & to sell strong beere by retail for the yeare ensuing & himselfe as principall in ten pounds & Thomas Matson sen<sup>r</sup> & Lionell Wheatly as Sureties in five pounds apeece were alike bound as aboues<sup>d</sup>.

Jane Bernard upon like certificate had her Licence renewed to keepe a house of publique Entertainm<sup>t</sup> for the yeare ensuing for the selling of Coffee Chocolate & bottle Sider & as an addition to sell strong beere by retail & her husband Bertholmew Bernard as principall in ten pounds & Richard Woody & Edward Cowell as Sureties in five pounds apeece were alike bound as aboues<sup>d</sup>. [237]

L<sup>t</sup> John Smith of winnisimmet upon Like certificate had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> & to sell wine strong beere sider & strong waters by retail for the yeare ensuing



provided hee keepe suitable Entertainm<sup>t</sup> according to Law & himselfe as principall in ten pounds & William Kent & Ephraim Turno<sup>r</sup> as Sureties in five pounds apeece acknowledged themselves respectiue bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Smith should observe the Laws title Inkeepers with all theire additions & that hee should keepe suitable Entertainm<sup>t</sup> according to Law & not sell his Sider for more then two pence per quart.

Anne Puglice upon certificate from the Selectmen of Boston had her Licence renewed to distill & retail strong waters by small quantities for y<sup>e</sup> yeare ensuing; provided shee did not sell to any of the inhabitants of the Town to drinke it in her house and George Puglice her husband as principall in ten pounds & Richard Collicot & William Bartholmew as Sureties in five pounds apeece acknowledged themselves respectiue bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that Anne Puglice should observe all the Laws concerning distilling and retailing of strong waters & that shee should not sell any to the inhabitants of the Town to bee dranck in her house.

Thomas Smith had his Licence renewed to distill & retail strong waters by small quantities for the yeare ensuing with the proviso abouesaide & himselfe as principall in ten pounds & Elisha Cooke & Richard Knight as Sureties in five pounds apeece were alike bound as aboue.

William Tay had his Licence renewed to distill & retail strong waters by small quantities for the yeare ensuing with the proviso abouesaide & himselfe as principall in ten pounds & John Tay & Isaiah Tay as Sureties in five pounds apeece were alike bound as aboue. [238]

[Licenses of other towns]

Elisha Hutchinson had his Licence renewed to distill and retail strong waters by small quantities for the yeare ensuing: provided hee did not sell to any of the Inhabitants of the Town to drinke it in his house & himselfe as principall in ten pounds & Eliakim Hutchinson & James Whetcomb as Sureties in five pounds apeece acknowledged themselves respectiue bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Elisha Hutchinson should

observe all the Laws concerning distilling & retailing of strong waters & that hee should not sell any to any of the inhabitants of the Town to bee dranck in his house

Sammuell Ruggles of Roxbury upon certificate from their Select men had his Licence renewed to keepe a house of publique Entertainment to sell wine strong beere & strong Liquo<sup>rs</sup> by retail for the yeare ensuing & himselfe as principall in ten pounds & Jn<sup>o</sup> Morse & Jacob Fowle as Sureties in five pounds apeece acknowledged themselves respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Ruggles should observe the Laws title Inkeepers with all their additions & that hee should not sell Sider for more then two pence the quart & that hee should not sell any strong Liquo<sup>rs</sup> to any of the inhabitants of their Town to bee dranck in his house.

Nicholas George of Dorchester upon Like certificate had his Licence renewed to keepe a house of publique Entertainm<sup>t</sup> to sell wine strongbeere & Sider by retail for the yeare ensuing & himselfe as principall in ten pounds & Richard Knight & John Casey as Sureties in five pounds apeece were alike bound as aboues<sup>d</sup>.

Nathan Bradley of Dorchester upon Like certificate had Licence granted to retail & Sell Sider for the yeare ensuing & himselfe as principall in ten pounds & Enoch Wiswall as Surety in five pounds acknowledged themselves respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Bradly should obserue the Laws & should not sell Sider for more then two pence the quart.

William Daniell of Milton upon like certificate had his Licence renewed, to keepe a house of publique Entertainm<sup>t</sup> to sell wine strong beere & Sider by retail for the yeare Ensuing & himselfe as principall in ten pounds & Robert Tucker & Anthony Newton as Sureties in five pounds apeece were alike bound as aboues<sup>d</sup>.

John Jacob of Hingham upon Like certificate had his Licence renewed to keepe a house of publique Entertainment to sell wine strong beere Sider & Liquo<sup>rs</sup> by retail for the yeare Ensuing & himselfe principall [ 239 ] in ten pounds John Thaxter sen<sup>r</sup> & John Thaxter junio<sup>r</sup> as Sureties in five pounds apeece acknowledged themselves respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide John Jacob should observe the Laws title

Inkeepers with all theire additions & that hee should not sell Sider for more then two pence the quart.

Isaac Lobdell of Hull upon like certificate had his Licence renewed for to keepe a house of publique Entertainment, to sell wine strong beere & Sider by retail for the year ensuing & himselfe as principall in ten pounds & Joseph Davis & James Meares as Sureties in five pounds apeice were alike bound as aboue.

John Aldus of Dedham upon like certificate had his Licence renewed to keepe a house of publique Entertainment to sell wine strong beere & Sider by retail for the yeare Ensuing & himselfe as principall in ten pounds & Cap<sup>t</sup> James Oliver & Thomas More as Sureties in five pounds apeice were alike bound as aboue.

Joshua Fisher sen<sup>r</sup> of Medfeilde upon like certificate had his Licence renewed to keepe a house of publique Entertainment & to sell wine strong beere & Sider by retail for the yeare ensuing & himselfe as principall in ten pounds & Cap<sup>t</sup> George Barber & John Thirston as Sureties in five pounds apeice were alike bound as aboues<sup>d</sup>.

Jn<sup>o</sup> Foster of Dorchester had his Licence renewed to distill & retail strong waters by small quantities for the yeare ensuing & himselfe as principall in 10<sup>li</sup> & Hopedill Foster jun<sup>r</sup> & Ephraim Searle as Sureties in 5<sup>li</sup> apeice were bound to the Treasuro<sup>r</sup> for his observance of the Laws & that hee should not sell to the inhabitants of the Town to drinke in his house.

This Court dissolved May 22<sup>th</sup> 1674 @.

#### PAINE to GIBBS

John Paine of Boston Late of Ipswich sonn of Elder Robert Paine of Ipswich personally appeared before John Leverett Esq<sup>r</sup> Govern<sup>r</sup> & Edward Tyng Esq<sup>r</sup> Assist: June 29<sup>th</sup> 1674 & acknowledged a judgment against himselfe & Estate to Robert Gibbs of Boston Merchant for Eighty one pounds two Shillings and three pence currant New-England mony being according to bond bearing date October 22<sup>th</sup> 1673. @.

as Attests Is<sup>a</sup> Addington Cler [240]

#### GIBBS & WHARTONS Covenant.

Whereas Benjamin Gibbs of Boston in New England hath Covenanted & agreed with Richard Wharton & Thomas Bendish of Boston

aforesaide Merchants to Loade the Ship called the Exchange John Bywater master with Fish at Newfoundland as per Articles of Agreement Signed & bearing date with these pu<sup>r</sup>sents more fully may appeare. And in order to a more punctuall compliance with the aforesaide Covenant, the saide Benjamin Gibbs hath hired & doth hire of m<sup>r</sup> Simon Lynde one halfe part of the Catch Endeavo<sup>r</sup> Henry Wheeler master to bee Loaden for Newfoundland Charterpartys for the saide Catch part running in the name of the saide Benjamin Gibbs; as also the Letting of the s<sup>d</sup> halfe to Freight from Newfoundland aforesaide to Rochell &c in the Kingdom of France upon the proper Account of m<sup>r</sup> John Baily of Rochell aforesaide: Together with the Loading of the saide Catch with Fish as per Articles in that respect Signed & Sealed & bearing date with these pu<sup>r</sup>sents more fully & at lardge doth & may appeare: Now Know all men by these pu<sup>r</sup>sents that the s<sup>d</sup> Richard Wharton doth hereby for himselfe his Executo<sup>rs</sup> & administrato<sup>rs</sup> Covenant promiss & grant to & with the saide Benjamin Gibbs his Executo<sup>rs</sup> & administrato<sup>rs</sup> that hee the s<sup>d</sup> Richard Wharton his Executo<sup>rs</sup> or assignes shall & will supply the s<sup>d</sup> Benjamin Gibbs with one halfe part of whatsoever hee the s<sup>d</sup> Benjamin Gibbs shall advise to bee necessary in order to the prosecuting of the s<sup>d</sup> designe over & aboue the two hundred pounds which the s<sup>d</sup> Richard Wharton & Thomas Bendish haue Covenanted to Supply the saide Gibbs withall; or otherwise to pay for the same; and also to comply with & fully to discharge the s<sup>d</sup> Benjamin Gibbs his Executo<sup>rs</sup> & administrato<sup>rs</sup> off & from all contracts Covenants Charterparties or Agreements which the saide Benjamin Gibbs hath made or shall make in order to the hiring of one halfe part of the s<sup>d</sup> Catch or to the procuring of any thing for the promoting of the saide designe in Loading the saide Ship and Catch with fish as aforesaide Together with one halfe part of all contingences and Losses that shall or may arise or happen to the saide Gibbs his Executo<sup>rs</sup> or assignes by reason of the abouenamed undertakings: And further to allow besides halfe the passadge & ordinary expences of Benjamin Allen Servant to the s<sup>d</sup> Benjamin Gibbs in all the saide Voiadge or Voiadges the full halfe of five per Cent for his the saide Allens respectiue selling & buying at each deliuering port; As also discharge & pay one halfe part of all damage, cost, charges, debts, demurrage dead freight, or detriment whatsoever [ 241 ] that shall or may arise



or come to the s<sup>d</sup> Benjamin Gibbs his heires Executo<sup>rs</sup> & administrato<sup>rs</sup> by reason or meanes of the aforesaide undertaking. In consideration whereof the saide Benjamin Gibbs doth hereby Covenant and promiss to & with the saide Richard Wharton his Executo<sup>rs</sup> & administrato<sup>rs</sup> that hee the saide Benjamin Gibbs shall & will Leave in the hands of the saide Wharton or otherwise deliver unto him one halfe part of the cleere profit that shall arise unto him the saide Gibbs in or by the saide voiadge or voiadges either by the earnings of the saide Catch or Sales of goods or Sales of Fish or by any other wayes whatsoever upon his the s<sup>d</sup> Benjamin Gibbs receipt of the same: And for the true Observation & performance of all & singuler the Covenants & Agreements & all other things aboue exprest, the saide parties doe binde themselves their heires Executo<sup>rs</sup> & administrato<sup>rs</sup> & all & either of them to the other in the Summe & pœnalty of five hundred pounds of Lawfull mony of New-England well & truly to bee paide by the party defectiue unto the party observant. In Witness whereof the saide partys unto these pu<sup>r</sup>sent writings interchangeably their hands & Seales have set the ninth day of October in the yeare of o<sup>r</sup> Lord One Thousand Six hundred Seventy & three.

Rich<sup>d</sup> Wharton (a seal)

Signed Sealed & Deliu<sup>r</sup>d in the pu<sup>r</sup>sence of us

Benjamin Allen

John Cobbit

John Hayward

Benjamin Allen John Cobbit & John Hayward did appeare before us the 23<sup>th</sup> day of July: 1674 and made Oath that they did see Richard Wharton Signe Seal & deliuer the aboue written Instrument as his act & Deed upon the day of the date thereof

John Leverett Gov<sup>r</sup>

Edward Tyng Assist

#### SEALY to JOYLIFFE

Elisabeth Sealy of Jsles of Shoales widdow, relict and administratrix to William Sealy deceased personally appeared before John Leverett Esq<sup>r</sup> Gov<sup>r</sup> & Simon Bradstreet Esq<sup>r</sup> Assist. July: 20<sup>th</sup> 1674 & acknowledged a judgment against herselfe & Estate to m<sup>r</sup> Jn<sup>o</sup> Joyliffe of Boston Merchant for the Summe of One hundred & four

pounds three shillings & five pence in mony being for soe much remaining due upon a bond for: £:118:03:05 bearing date 25<sup>th</sup> of July: 1672.

as Attests Is<sup>a</sup> Addington Cler

Execucion issued July 24: 1674 [ 242 ]

[ WHARTON's Order ]

October: 23: 1673.

M<sup>r</sup> Gibbs:

S<sup>r</sup> J will pay you fifty five pounds in mony for m<sup>r</sup> Mellot

Yo<sup>rs</sup> to serve y<sup>o</sup>

Rich<sup>d</sup> Wharton

Endorsed

Augustine Melot aged about 22 yeares Sworn saith that by virtue of the within written order from m<sup>r</sup> Richard Wharton, hee hath received of m<sup>r</sup> Benjamin Gibbs full Satisfaction for the Summe therein specified, part in hand & part by judgment acknowledged on the day of the date hereof July: 23: 1674.

Before us John Leverett Gov<sup>r</sup>

Edward Tyng Assist.

#### GIBBS to MELOT

M<sup>r</sup> Benjamin Gibbs personally appeared before Jn<sup>o</sup> Leverett Esq<sup>r</sup> Gov<sup>r</sup> & Edward Tyng Esq<sup>r</sup> Assist July 23<sup>th</sup> 1674 & acknowledged a judgment against himselfe & Estate unto Augustine Melot for twenty seven pounds ten shillings in mony being in full of a bill drawn by the s<sup>d</sup> Gibbs upon his Servant Benj<sup>a</sup> Allen bearing date Octobr 24<sup>th</sup> 1673 for the paiment of the Summe of Fifty five pounds in Fish at Newfoundland according to the rate per quintall therein mentioned.

This was then done as Attests

Is<sup>a</sup> Addington Cler.

Augustin Mellot personally appeared in the Office Aug<sup>o</sup>: 27: 1674 & acknowledged hee had received full Satisfaction for this judgm<sup>t</sup> of £:27:10<sup>s</sup>:0. desiring it might bee soe Entred as Attests

Is<sup>a</sup> Addington Cler

## SAVAGES Evidence

Thomas Savage aged 34 yeares or thereabouts Sworn saith that being in the Shop of m<sup>r</sup> Benj<sup>n</sup> Gibbs at or about the 10<sup>th</sup> of instant July m<sup>r</sup> Richard Wharton & the s<sup>d</sup> Gibbs being in the Shop discoursing together (amongst some other discourse that past between them) I did heare m<sup>r</sup> Richard Wharton using words to perswade the s<sup>d</sup> Gibbs to enter into bonds of arbitration; which the s<sup>d</sup> Gibbs seemed to bee backward unto; upon which s<sup>d</sup> Wharton used this expression as an argument to perswade s<sup>d</sup> Gibbs thereunto: you know saide hee the mindes of the Arbitrato<sup>rs</sup> already, & therefore it can bee noe disadvantage to you or words to that purpose.

Taken upon Oath: July: 25<sup>th</sup> 1674

Before us John Leverett Gov<sup>r</sup>

Edward Tyng Assist. [243]

## HAYWARDS Evidence

The Deposition of John Hayward aged thirty four yeares or thereabout saith that about the eleventh day of this instant July m<sup>r</sup> Richard Wharton gave mee instructions for the drawing of bonds for arbitracion betwixt the saide Richard Wharton & Thomas Bendish as Facto<sup>rs</sup> or agents to Hillery Renew & Company: and m<sup>r</sup> Benjamin Gibbs for the ending of all differencyes relating to the Loading of the Ship called the Exchange of Hull m<sup>r</sup> John Bywater mast<sup>r</sup> at Newfoundland; also bonds for Arbitracion between Augustine Mellot factor for John Baily of Rochell and the saide m<sup>r</sup> Benjamin Gibbs relating to the hire of the Catch Endeavo<sup>r</sup> (whereof Henry Wheeler was then Master) for a voidage to Newfoundland &c & Loading the saide Catch there with Fish: And when J had taken instruction hee called m<sup>r</sup> Gibbs to my Shop & desired mee this deponent to read the instructions given; which J this deponent did: and the saide Gibbs then replied why should J goe to Arbitration J am secure enough already: And the s<sup>d</sup> Wharton made answer it is the best way for the securing both partyes for they did not know that those that came after might bee soe able to manage that matter as they were: And then m<sup>r</sup> Gibbs saide why should J bee bound who am now free: and m<sup>r</sup> Wharton replied that saide Hayward knowes our concerns already, therefore wee need not bee scrupilous of speaking before him, wee are equally concerned together & you must

thinke that J am not willing to damnify myselfe (or words to that Effect) & farther saide to m<sup>r</sup> Gibbs you partly understand the Gentlemens mindes already they having knowledge of the matter (with some other words to the same Effect) upon which the s<sup>d</sup> Gibbs agreed that the s<sup>d</sup> bonds should bee drawn and J this deponent did draw the s<sup>d</sup> bonds according to instructions & deliuered them to m<sup>r</sup> Gibbs & farther saith not.

Taken upon Oath July: 25<sup>th</sup> 1674 @

Before us John Leverett Gov<sup>r</sup>

Edward Tyng Assist.

[ Evidence about MEAD and ALCOCK ]

Wee whose names are underwritten, having been acquainted with the contests between m<sup>r</sup> Richard Mead of Roxbury & m<sup>r</sup> Samuel Alcock of Boston concerning the house & Lands of m<sup>r</sup> Samuell Alcock lying in Roxbury; which haue been in the possession of the saide Richard Mead for many yeares Last past by the permission of the saide Samuel Alcock Do upon our Oathes testify that on the twenty seventh of January Last past, being present in Roxbury w<sup>th</sup> the saide Richard Mead & Samuel Alcock, saw & heard the s<sup>d</sup> Richard Mead give unto the saide Samuel Alcock full & peaceable possession of the abouemention<sup>d</sup> Tenement & all its appurtenances by turffe & twigg with deliury also of the key of the s<sup>d</sup> house for him y<sup>e</sup> s<sup>d</sup> Samuel Alcock & his heires proper use & behoofe forever as witness o<sup>r</sup> hands this third day of March in the yeare of o<sup>r</sup> Lord 167<sup>3</sup>/<sub>4</sub>.

This testimony was taken by Samuel Danforth & Daniel Brewer before us y<sup>e</sup> 3. 7<sup>ber</sup> 1674. upon their corporall Oathe.

Daniel Denison

Richard Russell

Samuel Danforth sen

Daniel Bruer

George Alcock [ 244 ]



At a County Court held at Boston, July 28<sup>th</sup> 1674 @

Present

JN<sup>o</sup> LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>

SIMON BRADSTREET	} Esq <sup>rs</sup>
EDWARD TYNG	
W <sup>m</sup> STOUGHTON	

Grandjury Sworn

Cap<sup>ta</sup> Sam<sup>ll</sup> Scarlett  
Jn<sup>o</sup> Bateman  
Edw: Cowell  
Moses Paine  
Edmund Bridge  
Jn<sup>o</sup> Ruggles

Edmund Quinsey  
Henry Chamberlin  
Peter Woodward  
Nathan<sup>ll</sup> Whiting  
Jn<sup>o</sup> Whitmash  
Jn<sup>o</sup> Plimpton

Jn<sup>o</sup> Levit  
Edmund Hobart  
W<sup>m</sup> Pond  
W<sup>m</sup> Weekes  
Geo. Sumner

Jury of Tryalls Sworn

m<sup>r</sup> Tim<sup>o</sup> Dwight  
Sam<sup>ll</sup> Legg  
Jer: Dummer  
Sam<sup>ll</sup> Crafts

Joshua Lamb  
Ri: Thayre sen<sup>r</sup>  
W<sup>m</sup> Chard  
Jn<sup>o</sup> Turner

Nathan<sup>ll</sup> Beale  
Isaac Riall  
Jn<sup>o</sup> Tolman  
Walter Mory

Arthur Mason added the 4<sup>th</sup> day in roome of Joshua Lamb

[ BELLINGHAM'S Executors v. CHAMBERLIN ]

M<sup>r</sup> John Oxenbridge m<sup>r</sup> James Allen & m<sup>r</sup> Anthony Stoddard Trustees & Executors to the Last will & Testament of Richard Bellingham Esq<sup>r</sup> deceased plaintiff. ag<sup>t</sup> Edmund Chamberlin of Maulden Defend<sup>t</sup> in an action of debt for non payment of six pounds in mony in Decemb<sup>r</sup> Last for rent of Marsh Let by them to the saide Chamberlain with all due damages according to Attachm<sup>t</sup> Dat: 25. of June. 1674. The Attachm<sup>t</sup> being read the Defend<sup>t</sup> owned the complaint exhibited therein; the case being committed to the Jury; they brought in their verdict & founde for the plaintiffes six pounds in mony & costs of Court being Fourteen Shillings & four pence.

Execucion issued: 7<sup>br</sup> 29: 74.

[ JONES v. CRISPE ]

John Jones plaintiff. ag<sup>t</sup> Zechariah Crispe Defend<sup>t</sup> in an action of the case for breach of promiss which is to the s<sup>d</sup> Jones his damage, the s<sup>d</sup> Jones being engaged for the saide Zechariah Crispe for maintenance of a Childe; which was Laide to the s<sup>d</sup> Crispe & all due damages

according to Attachm<sup>t</sup> Dat: June: 18<sup>th</sup> 1674. . . . The Jury . . . founde for the plaintiffe Fifty shillings in mony & costs of Court: The Defend<sup>t</sup> appealed from this judgment to the next Court of Assistants & himselfe principall in five pounds & John Taylor & Simeon Messeng<sup>r</sup> as Sureties in Fifty shillings apeice acknowledged themselves respectiuey bound to . . . prosecute his appeal . . .

[ The Laws and Liberties of Massachusetts are not quoted correctly in Crisp's Reasons of Appeal (S. F. 1324.3), which follow:

To the Honorable the Govern<sup>r</sup> & Magis<sup>rs</sup> now Assembled in Court

Zachariah Crisp his reasons of Appeal from the Judgment of A County Court held in Boston July the 28: 1674 in A Case where in he was defendant to Answer John Jones plaintif

First Because J am sued for breach of promis but not said whether my promis or the plaintiffs or Any other mans nor to whom the said promis was maid; which rendered me not Capable to fitt myself for Any Answer. Contrary (as J humby Conceue) to the true meaning and intent of that Law Title Attechments or summons pg: 7: sec: 2 which saith the Cause of Action shall be breifly mentioned in the Atteachment by which word breifly must be soe mentioned as to provide for an answer by A promis not spetifying what J Could not provide proof of performance which J Conceue was ground of A Nonsuit.

2ly The said premisses is not at all proued whether J euer made him the now defendant any promis nor euer did and therefore Could not break any; and the breach is as little proued as the makeing of any soe that indeed there is noe part of the Cause of Action proued that J know of; yet J am Cast to paye fifty Shillings wherefore J Appealed to this Court to be relieued.

3ly Jt is true that there appeareth a paper subscribed James Stiueus by him self or sum other which sayeth hee receued fifty shillings but if he receued it vpon the Concideration of leting fall an Action or other wise what doth that bind me to repaye fifty shillings which J neuer promised nor is yet Any way prooued And alsoe the sole Euidence in the Case (to wit) Returne Waytes oath which he did swear too was that he saw fifty shillings payed without Any more Adition as he doth Aferm and to that the Clareke haith added all the rest which is false and untrue for the said Steuens haith not nor Euer had Any doughter of Age to haue A Child and thereby his doughter is slandered with the Clarke's fals additions to the oath as J humbly Conceue (or by Returne Waytes fals oath; Now by which fals prooffe J am Cast though that neither proofeth any promise made and broken by mee to the dammage of John Jones yet am J Cast wherefore J appealed to Cum to this Hon<sup>d</sup> Court for releefe

Zachariah Crisp:

These Reasons were received August, 26<sup>th</sup> 1674: per Js<sup>a</sup> Addington Cler

S. F. 1324.4

John Joans his answer to Zac[ri]ah Crisps Reasons of appeale from the Judgment of a County Coartt held in Boston July 28 1674

The apelantts first reason siemeth to plead for a nonsute grounded upon his suposision of an eror in the atachmentt and so taketh upon him the power of the

honored genarall Coartt to explaine and giue to this honerd Coartt as hee saith the true intent and meaning of the law tit[le] atachments which high presumption I humbly desire this honered Coart will consider: and if hee would haue plead a nonsute that should haue bin don in the proper season of it viz before the cace was comited to the furst Jury but being nou to late I need not trouble this honored Coartt with many words about it

2<sup>ly</sup> whear as hee saith in his 2 reason no promis of his proued theirfore nou breake: to that I answer that him selfe denieth it not and silenc is taken for a consentt besids Justes and reason will say that by hauing paied fifty shilings in mony for him upon his reques and desire hee being in a great strait for the present and nesesery suport and releife of his deeare Child as will apeare by the copy of an atachment serued on me by James Steuens as i was surty for the apelant Concerning the premises and also return waits oath all which euedenc is now in coartt in this cace: i say I humbly conceiue that Justes and reason will Cause him to repay mee my money again which the honered County Coart has Justly and leagaly granted mee and yett hee like a trobelson person appealleth puting mee and him selfe to nedles trouble

3<sup>ly</sup> where as the appelant saith that [in] his 3 reason so caled but as i humbly conseiue rather an an acusation or exclamation against the honred County coartt and Jury expresly contrary to the law titled apeales page the 4 sex the 2 which directeth and comandeth all persons apealing shall briefly in writing with out reflecting on coartt or parties by prouoking langidg: which I humbly conceiue hee hath absolutly broakne for he saith that hee was cast only by a paper subscribed James steuen by him selfe or som other and returne waits false oath or the Clarks false addition to it: what an horable and high reflection and contempt of authority is this I humbly intreat this honered Coart and Jury to Consider and Judg and also the honesty and equity of my cause and hou he goeth about by strange and false exclamations in his 3 and last reason to diurtt the honistie of my good Cause wheirfor I shall make bould to leaue all to the considration of this honered Coart and Jury and subscribe my selfe your honours moste humble seruant

John Joanes

The Appeal was heard by the Court of Assistants when the Jury found this *very* special verdict (S. F. 1324.5):

Jn the Case of Zachariah Crisp plaintiff against John Joanes defendant: the Jury finde A speciall verdite: that Jn Case the testimony of Retturue Way[torn] steuenses Reseipt & John Joanes Afirmation be Suffisient Evidence according to [torn] to proue A promis: then we finde for the defendant Confirmation of the form[er] Judgment & Cost of Courts if not we finde for the plaintiff Reuertion of the fo[rmer] Judgment & Cost of Courts

Rich [Knight] F[ore]man

The magistrates, "on pervsall of this virdict they declard for the deffendant & costs of courts." Records of the Court of Assistants, i. 18.]

DAVIE ag<sup>t</sup> NOYS

M<sup>r</sup> Humphry Davie plaint. ag<sup>t</sup> John Noyes Defend<sup>t</sup> in an action of the case for withholding the Summe of thirty eight pounds in mony

remaining unpaide of Seventy six pounds; which hee received of the Executo<sup>rs</sup> or administrato<sup>rs</sup> of Sammuell Haugh deceased upon expiration of & according to a Lease of a house & ground in Boston made by the s<sup>d</sup> Haugh to Peter Oliver his heires Executo<sup>rs</sup> &c for twenty one yeares; who assigned the same to John Witherden his heires & assignes & the s<sup>d</sup> Witherden by Deed hath made over the same to s<sup>d</sup> Davie as by the same may appeare with all due damages according to Attachm<sup>t</sup> Dat. July. 14<sup>th</sup> 1674. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court. [245]

SANDS ag<sup>t</sup> HUTCHINSON

John Sands plaint. ag<sup>t</sup> Cap<sup>t</sup> Edward Hutchinson Defend<sup>t</sup> in an action of trespass of forty five shillings or thereabout for pulling down his fence in may last & cutting it in peeces whereby the plaintiffe hath likewise lost the emprouem<sup>t</sup> of his land to the plaintiffes great damage according to Attachm<sup>t</sup> Dat: July: 9<sup>th</sup> 1674. . . . The Jury brought in there Verdict; which was Jf an Extention of an Execucion by Court Order without a Return & Record of the same with the Marshalls Oath that it was done bee a good title to the land wee finde for the plaint. if not wee finde for the Defendant costs of Court. The Magistrates declare for the Defend<sup>t</sup> costs of Court: The plaint. appealed from this judgment to the next Court of Assistants & the s<sup>d</sup> Jn<sup>o</sup> Sands as principall in five pounds & Sam<sup>ll</sup> Legg & James Meares as Sureties in Fifty shillings apeice acknowledged themselues respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke & party concerned on condicion that the s<sup>d</sup> Jn<sup>o</sup> Sands shall prosecute his appeal from the judgement of this Court at the next Court of Assistants to Effect.

[ The Court of Assistants (Records, i. 17) reversed the judgment of the lower court, and found 42s damages and 4l 14s 6d costs. Hutchinson, after falling foul of Sands (see Hutchinson v. Sands, p. 470, below), petitioned the Assistants (S. F. 26630):

To y<sup>e</sup> much Hon<sup>rd</sup> Court of Assistants now Siting

The humble petition of Edward Hutchinson

Humbly prays this hon<sup>rd</sup> Court to consider y<sup>e</sup> following perteculers in Answer to John Sands his complaint to this Court.

first Edward Hutchinson though sued in person by John Sands yet it was for what he did as Guardian to William Randall, & neuer Joyned Jssue as Edward



Hutchinson but as Guardian to Randall & y<sup>r</sup>fore in y<sup>e</sup> first place prodused y<sup>e</sup> Courts order & y<sup>e</sup> caise & person being vnderstood y<sup>e</sup> Action proseded.

2<sup>ly</sup> The appeale was onely from y<sup>e</sup> Bench in point of Law, & therefore was onely to be tryed by y<sup>e</sup> Bench, & not by Jury (as I humbly conceiue) & at y<sup>t</sup> time pleaded, w<sup>ch</sup> had y<sup>e</sup> Bench issued y<sup>e</sup> caise no such cost or damage could ever haue arisen. (Tit Appeal. 5. 1. p. 3.)

3<sup>ly</sup> Hutchinson had he recouerd had not bene benefited in his estaite & therefore his estaite not to be damnefied

4<sup>ly</sup> for any thinge J know y<sup>e</sup> caise is still depending in y<sup>e</sup> General Court, Hutchinson haueing petitioned them for a hearing w<sup>ch</sup> was granted by y<sup>e</sup> Deputys, & he humbly hopes y<sup>e</sup> magistrats will not deny it, howeuer wil take some corse for his iust releife. many other considerations there are w<sup>ch</sup> this honrd Court he hopes will Consider seriously of. & therefore humbly prays this Hon<sup>rd</sup> Court will at least Respit Execution, vntill y<sup>e</sup> Genr<sup>ll</sup> Court y<sup>t</sup> he may know there minde there in, wh[om] he hopes will grant releife in so iust a caise as he apprehends. & yo<sup>r</sup> petitioner shall pray as in duty bound.

[Endorsed:] Cap<sup>t</sup> Hutchinsons petition

In answer to this petition, the execution against Hutchinson was respited until 15 May 1675. Records of Court of Assistants, i. 32.]

#### JONES ag<sup>t</sup> NOWELL

John Jones plaint. ag<sup>t</sup> George Nowell Defendant in an action of the case for selling & delivering a parcell of blacksmiths tooles of his the s<sup>d</sup> Jones as namely a lardge paire of bellows Anvill vice tongs Sledges hammers Buttres files & others to the damage of the plaintiffe fiveteen pounds in mony or thereabouts & all other due damages according to Attachm<sup>t</sup> Dat. the 18<sup>th</sup> day of May: 1674. . . . The Jury . . . founde for the Defendant costs of Court.

#### SHRIMPTON ag<sup>t</sup> GREENOUGH

Sammuell Shrimpton plaint. ag<sup>t</sup> William Greenough Defendant sometime ma<sup>r</sup> of the Ship Blessing of Boston according to Attachm<sup>t</sup> Dated July: 22<sup>th</sup> 1674. The plaint. withdrew his action.

#### HOLMAN ag<sup>t</sup> HOLMAN

John Holman eldest Sonn of John Holman sen<sup>r</sup> deceased plaint. ag<sup>t</sup> Thomas Holman Defend<sup>t</sup> in an action of the case for that the s<sup>d</sup> Tho: Holman withholdeth from or not deliuers to him the s<sup>d</sup> Jn<sup>o</sup> Holman his due proporcion of the houses & lands goods or Estate that sometime was the Estate of & did pertaine to the s<sup>d</sup> Jn<sup>o</sup> Holman

sen<sup>r</sup> deceased (& now is in hands custody possession or occupation of s<sup>d</sup> Tho: Holman of Milton) as hee is the eldest sonn of him the s<sup>d</sup> Jn<sup>o</sup> Holman deceased being a double portion according as the Lawes doe allow & direct, for the want whereof [246] The s<sup>d</sup> Holman plaintife is damnified at leaste two hundred pounds sterling with other due damages according to Attachment Dat July: 22<sup>th</sup> 1674. . . . The Jury . . . founde for the Defendant costs of Court.

SAFFIN Attourney to ASHTON ag<sup>t</sup> GIBBS

John Saffin Attourney to Henry Ashton plaint. ag<sup>t</sup> Benj<sup>a</sup> Gibbs Defend<sup>t</sup> in an action of Reveiw according to Attachm<sup>t</sup> Dat: July: 18<sup>th</sup> 1674. The Accion being called both plaintife & Defend<sup>t</sup> appeared: The Defend<sup>t</sup> moved for a Nonsuite for that the Accion had been tryed at a former Court & judgm<sup>t</sup> granted him. The Court declared the plaint. could not reveiw according to Law & therefore granted a NonSuite, the parties afterwards joined issue by consent; but the plaint. not producing full power to prosecute this accion & the Defend<sup>t</sup> not allowing of the power hee had the accion fell & the Court granted the Defend<sup>t</sup> costs of Court.

[ Apparently the Court was weary of the Ketch Recovery.]

DOWELL ag<sup>t</sup> WARREN

James Dowell plaint. ag<sup>t</sup> Humphry Warren (who married m<sup>rs</sup> Elizabeth Downe the relict of m<sup>r</sup> Edmund Downe deceased) Defend<sup>t</sup> in an action of the case for detaining or not paying the s<sup>d</sup> Dowell the summe of Seventy pounds or thereabout in mony due for wages unto him the s<sup>d</sup> Dowell & to two of his Seamen for Service done in the Catch Begining in the yeare 1671 from Boston to Cape Sables & from thence to Fiall & from thence to Traceras & from thence to London in old England with all just interest & other due damages according to Attachm<sup>t</sup> Dat: July: 23<sup>th</sup> 1674. . . . The Jury . . . founde for the Defendant costs of Court.

GREENOUGH ag<sup>t</sup> SHRIMPTON

William Greenough sen<sup>r</sup> plaint. ag<sup>t</sup> Sammuell Shrimpton Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: July: 18<sup>th</sup> 1674. The plaint. withdrew his accion.

WHARTON &<sup>a</sup> ag<sup>t</sup> GIBBS

Richard Wharton & Thomas Bendish Factor<sup>s</sup> agents or Attournys to Hillery Renew & Company Merchants plaint<sup>s</sup> ag<sup>t</sup> Benjamin Gibbs Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: July: 22<sup>th</sup> 1674. The plaint<sup>s</sup> withdrew theire Accion.

[For this and the next three cases, and the first three on p. 464, see the lengthy Gibbs & Wharton Covenant, and Hayward's Evidence, pp. 451-3, 454-6, above.]

MELLOTE ag<sup>t</sup> GIBBS

Augustine Mellote Factor agent or Attourney to Jn<sup>o</sup> Bayly Merchant plaint. ag<sup>t</sup> Benj<sup>a</sup> Gibbs Defendant according to Attachm<sup>t</sup> Dat: July: 23<sup>th</sup> 1674 the plaint. withdrew his Accion.

WHARTON ag<sup>t</sup> GIBBS

Richard Wharton plaint. ag<sup>t</sup> Benj<sup>a</sup> Gibbs Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: July: 20<sup>th</sup> 1674. The plaint. withdrew his accion. [247]

WHARTON ag<sup>t</sup> GIBBS

Richard Wharton plaint. ag<sup>t</sup> Benj<sup>a</sup> Gibbs Defendant according to Attachm<sup>t</sup> Dat: July: 22<sup>th</sup> 1674: The plaint. withdrew his accion.

WILLIAM PARKE &<sup>a</sup> ag<sup>t</sup> MORRISSE

Deacon William Parke m<sup>r</sup> Joseph Dudley & Thomas Weld John Bowles Deacon Giles Payson & Robert Williams Feoffees of the Freeschoole of Roxbury plaint<sup>s</sup> ag<sup>t</sup> Edward Morrise sen<sup>r</sup> Defendant in an action of the case for withholding & not delivering up unto the saide Feoffees a certain part of the Estate of the Late m<sup>r</sup> Thomas Bell of London consisting in household stuffe & movable goods nor a just Account of them supposed to amount unto the Summe of twenty pounds, perticularly a paire of good shod wheeles plowes plow Irons, bedding & other implements of husbandry & house keeping given by the s<sup>d</sup> Thomas Bell unto the schoole of Roxbury aforesaide, of which s<sup>d</sup> schoole & the Estate thereof the abouenamed persons are Feoffees in trust, together with all due damages as shall then & there bee made appeare according to Attachm<sup>t</sup> Dat: 22.5.74. . . . The Jury . . . founde for the plaint<sup>s</sup> all the goods in the Defendants

hand relating to the Freeschool afores<sup>d</sup> to bee deliuered to the plain-tiffs afores<sup>d</sup> the Defendant purging himselfe by his Oath & paying costs of Court in the pœnall Summe of thirty pounds in mony.

GIBBS ag<sup>t</sup> WHARTON

Benjamin Gibbs plaint. ag<sup>t</sup> Richard Wharton Defendant according to Attachm<sup>t</sup> Dat. July: 21<sup>th</sup> 1674. The plaintiffe withdrew his Accion.

GIBBS ag<sup>t</sup> WHARTON

Benjamin Gibbs plaint. ag<sup>t</sup> Richard Wharton Defendant according to Attachm<sup>t</sup> Dat. July: 22<sup>th</sup> 1674. The plaintiffe withdrew his Accion.

GIBBS ag<sup>t</sup> WHARTON &a

Benjamin Gibbs plaint. ag<sup>t</sup> Richard Wharton & Tho: Bendish or either of them Defendants according to Attachm<sup>t</sup> Dat. July 23<sup>th</sup> 1674: The plaint. withdrew his Accion.

GIBBS ag<sup>t</sup> BONNER &a

Benjamin Gibbs plaint. ag<sup>t</sup> Jn<sup>o</sup> Bonner & James Everill or either of them Defendants in an accion of the case for breach or nonperformance of theire bonds or Ingagem<sup>ts</sup> in one hundred pounds ap<sup>s</sup> jointly & seuerally entred at a County Court held at Boston. 29<sup>th</sup> October. 1672. by theire not performing of an Award or Awards under the hands & seales of m<sup>r</sup> Jn<sup>o</sup> Joyliffe m<sup>r</sup> Peter Lidget & m<sup>r</sup> Tho: Deane bearing date the 20<sup>th</sup> day January. 1672. relating to the afores<sup>d</sup> bond concerning severall differences between saide Bonner & one Henry Ashton & Jn<sup>o</sup> Ireland with other due damages according to Attachm<sup>t</sup> Dat: July: 1. 1674@ [248] . . . the Jury . . . found for the Defendant costs of Court The plaintife appealed from this Judgment to the next Court of Assistants & the s<sup>d</sup> Benj<sup>a</sup> Gibbs as principall in five pounds & Joseph Rock & Nicholas Paige as Sureties in Fifty shillings apeice acknowledged themselues respectiuey bound to the Treasuro<sup>r</sup> of the County of Suffolke & partys concerned on condicion that the s<sup>d</sup> Benjamin Gibbs shall prosecute his Appeal from the judgment of this Court at the next Court of Assistants to Effect.

[See note under next case.]



GIBBS ag<sup>t</sup> BONNER &<sup>a</sup>

Benjamin Gibbs plaint. ag<sup>t</sup> John Bonner James Everill or either of them Defendants in an action of reveiw of an action of the case commenced by s<sup>d</sup> Bonner ag<sup>t</sup> s<sup>d</sup> Gibbs & Henry Lawton for breach or nonperformance of theire bonds or ingagements in one hundred pounds ap<sup>s</sup> bound jointly & seuerally at a County Court held at Boston the 29<sup>th</sup> October. 1672. by theire not performing an Award under the hands & Seales of m<sup>r</sup> Jn<sup>o</sup> Joyliffe & m<sup>r</sup> Peter Ledget & m<sup>r</sup> Tho: Deane bearing date January. 20<sup>th</sup> 72. relating thereunto; with other due damages & prosecuted to Effect at a Court of Assistants sitting in Boston on theire Adjournm<sup>t</sup> October. 30<sup>th</sup> 73. with other due damages according to Attachm<sup>t</sup> Dat: July: 2<sup>d</sup> 1674. . . . The Jury. . . . founde for the Defendants costs of Court: The plaintife appealed from this judgment to the next Court of Assistants & the s<sup>d</sup> Benj<sup>a</sup> Gibbs as principall in five pounds & Joseph Rock & Nicholas Paige as Sureties in Fifty shillings apeice acknowledged themselves respectiely bound to the Treasuro<sup>r</sup> of the County of Suffolke & partys concerned on condicion that the s<sup>d</sup> Benjamin Gibbs should prosecute his Appeal from the judgment of this Court at the next Court of Assistants to Effect.

[The Court of Assistants (Records, i. 17) found again for the defendant, with 34s 8d costs.]

GIBBS ag<sup>t</sup> LAWTON

Benjamin Gibbs plaint. ag<sup>t</sup> Henry Lawton Defend<sup>t</sup> in an accion of the case for refusing to pay the one halfe of One hundred pounds in mony recovered ag<sup>t</sup> him the s<sup>d</sup> Gibbs by Jn<sup>o</sup> Bonner as bound jointly & seuerally with s<sup>d</sup> Lawton in a bond of Arbitration entred in Court respecting one Henry Ashton and Jn<sup>o</sup> Ireland with other due damages according to Attachment: Dat: 21<sup>th</sup> day of July 1674. . . . The Jury . . . founde for the plaint. Fifty pounds in mony & costs of Court 34<sup>s</sup>.

Execucion issued Aug<sup>o</sup> 24: 1674 [ 249 ]

[This is the last of the Ketch Recovery cases, but the testimony of Hebert and Savage, below, p. 495, belongs to this controversy.]

EVANS ag<sup>t</sup> NOYES

William Evans plaint. ag<sup>t</sup> John Noyes Defendant in an accion of the case for detaining the Summe of Forty pounds or thereabouts

in mony due to the saide Evans by Covenant upon the expiration of a Lease of an house sometime belonging to John Witherden the moity or halfe of which house the saide Evans purchased & paide for & was to bee repaide by the Now possessors at the expiration of the saide Lease; with other due damages according to Attachm<sup>t</sup> Dat. June 19<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. thirty eight pounds mony & costs of Court. William Evans personally appeared in the Office July 31<sup>th</sup> 1674 & acknowledged hee had received of John Noyse full Satisfaction for this Judgment.

STODDARD ag<sup>t</sup> ROCK

m<sup>r</sup> Anthony Stoddard guardian to Tho: Robinson plaint. ag<sup>t</sup> Joseph Rock that was administrato<sup>r</sup> to the Estate of m<sup>r</sup> John Coggan & mistris Martha Coggan Executrix to the Last will & testament of m<sup>r</sup> John Coggan deceased Defendant in an action of the case for refusing to pay unto him the saide Guardian the Summe of Sixty nine pounds Fourteen shillings & eight pence mony; which is a fift part of what remains in his hands as Administrato<sup>r</sup>; as also a fift part of what Rents hee hath received since the date of his Account according to an order of Court; as by the same may more fully appeare with all due damages according to Attachm<sup>t</sup> Dat: July: 22<sup>th</sup> 1674. . . . The Jury . . . finde; Jf the will bee according to the Explanation of the County Court then wee finde for the plaint. Sixty nine pound fourteen shillings & eight pence & costs of Court; if not wee finde for the Defendant costs of Court. The Magistrates finde for the plaint. Sixty pounds & costs of Court: The Defend<sup>t</sup> appealed from this Judgment to the next Court of Assistants & the s<sup>d</sup> Joseph Rock as principall in One Hundred & twenty pounds & James Brading & Jn<sup>o</sup> Noyes as Sureties in Sixty pounds apeice acknowledged themselves respectiuey bound to . . . prosecute his Appeal . . .

[ For the beginning of this protracted litigation, see p. 109. A concise summary of the dispute is found in Stoddard's answer to Rock's reasons of appeal (S. F. 1327.9):

m<sup>rs</sup> Cogg[in] being Executrix to m<sup>r</sup> Coggin his Will she dying y<sup>e</sup> whole estate fell to Caleb Coggin y<sup>r</sup> sonn who also dying in his nonage. by y<sup>e</sup> expresse termes of the said m<sup>r</sup> Coggins Will is giuen a fift part to m<sup>rs</sup> Rock during her life, and y<sup>e</sup> rest to m<sup>r</sup> Robinsons Children. The Eldest sonn of whom I am Gardian to.

m<sup>r</sup> Rock after y<sup>e</sup> dease of m<sup>rs</sup> Coggin had Administration granted him The Court finding by his Account soe much resting in his hand more then he had disbursed order him as is expressed in y<sup>r</sup> order now in Court The w<sup>ch</sup> he refusing to pay I sued him y<sup>e</sup> last Court and obtaned a iudgment from w<sup>ch</sup> he Appealed . . .

Rock's lengthy reasons of appeal are in S. F. 1327.7. They run in part as follows:

Joseph Rocks Reasons of Appeale from the Judgm<sup>t</sup> of the County Court held at Boston July 28<sup>th</sup> 1674 in the Case of M<sup>r</sup> Anthony Stodder Guardian p<sup>lt</sup> & Joseph Rock Defendant as Followeth.

first That M<sup>r</sup> Stodder haue wronge Stated this Action in Severall respects & Sues the Appealant Elegaly, first in that he had Sued the s<sup>d</sup> Rock Joyntly w<sup>th</sup> Dacon Parks & M<sup>r</sup> Bartholomew all as Guardians to M<sup>r</sup> Robinsons Children in w<sup>ch</sup> was included this very Case & matter at A County Court held in Aprill 1673 in Boston as by the Courts Judgment N<sup>o</sup> 1: may appeare which Court he & they Sued for the ballance of this very accompt or Some he now Sues for & Sayth in the Attachm<sup>t</sup> nor payd the ballance w<sup>ch</sup> by his accompt<sup>t</sup> he makes due in which ballance is this matter that he now Sues for Apart of as a Guardian by himSelfe & leaves out M<sup>r</sup> Bartholomew & Parks which is all the difference for Substance & at the Court afores<sup>d</sup> the Jury found for Rock against all the Guardians; And M<sup>r</sup> Stodder ought by Law & reason to haue Sued uppon A Review of the afores<sup>d</sup> Judgment or verdict if hee had not liked it & not to Sue me in a new & other Action for the Same thing which is altogether Contrary to the direction of the Law and Custome, And Secondly in another respect he Sues me wrong in that the words of his Attachment N<sup>o</sup> 2 July Court last in this Case he Sues me as Joseph Rock that was Administrator to M<sup>r</sup> John Coggens Estate, in which Capacity or denomination J am not Capable to be Sued; uppon this Action, for that the Law Title Attatchments Sextion 3: doe Say that all men must Specifye in the prosses positue the name Capacity or denomination any man there Stands in when Sues as Executor Administrator or Attorney or Guardian & not that was Executor Administrator or Guardian & this by lawe reason & vdeniable Consequence is Jntended both for Plaintiffe & Defendant to be termed & Specified for name or title in the prosses or Else a man may as well Sue another & Say beinge Plaintiffe Attorney Assignee or Administrator that was Requiers you to Answer his Complaint; And Soe am J Sued & J haue pleaded against it in all Courts as Elegall but Still over ruled Soe that J am become an out Lawed Administrator w<sup>th</sup>out any Legall proceedings to make me Soe, as J Conceive, and only Capable to be Sued & to pay as an Administrator but not to Sue nor Receive as Administrator: And if M<sup>r</sup> Stodder had Sayd in his prosses Joseph Rock noe Administrator he had Spoke plainly & not Equivocated, for its all one to Say Joseph Rock noe Administrator & that he was Administrator for it intends & Jmployes one & the Same thing in all Respects taken; And that J am an Administrator all the Courts orders Explanations & Judgments doe fully manifest & Confirme me in these words Saying that if Joseph Rock Shall pay Such Summes to the Guardians & fulfill the Courts orders he is discharged from his Administration, Elce not, And he hath not done it, therefore is not discharged, but Still remains as full & Legall Administrator as Ever, and ought to be Soe sued, & to Sue, or noe Action to Stand good for or against the Apelant Concerning the aforesaid Estate, if he may haue the benefitt of the Law which he humbly desires & hopes for, And further the



Apelant was Sued by the afores<sup>d</sup> Gardians in January Court 167<sup>2</sup>/<sub>3</sub> for a Just & true accompt of Said Coggens Estate & the Appellant did performe it & delivered it to the Guardians in Court & it was Received & approved of by the Court and Jury w<sup>th</sup> the ballance being about two hundred Sixty nine pounds Eighteene Shillings as by the order of an Adiourned Courte November 1673: as to prove the ballance & per Judgment of Aprill Court 1673 to prove my accompt Just & Allowed of by Juryes Verdict and Courts Judgment finding for me Cost of Court, . . . thus hoping this honoured Court & Gentlemen of the Jury will Easily See in reason & nature that a Mother & Children Cannot Stand a like of kindred to any person in the world, and much lesse a Sister & Sisters Children as my Case is now by my wife, and where one Law & practise will not Allow of heirShip it hath vsually allowed of the nearest of kindred in the place of it, to posses & Enioy & I hope my Case will find the Same favour & Justice from my Judges to whose Serious Consideration I Commit All the p<sup>m</sup>isses desiring the Lord to direct you therin & Subscribe my Selfe

Yo<sup>r</sup> most humble Servant

Joseph Rock

In his reply (S. F. 1327.9), Stoddard justly charges Rock with prolixity, and declares: "In his Copious writting there is soe many impertinances and mistakes that vnlesse I should be Misled by him into the like error I forbear to make a particular answere y<sup>r</sup>to. . . ." Accordingly, he contents himself with the summary of the case already quoted above. The Court of Assistants, upon appeal (Records, i. 17), reversed the former judgment and awarded costs to Rock. His bills of cost are in S. F. 1327.8,10. But Rock was in Court again at the July session. See below, pp. 493-4.]

#### DAVIS ag<sup>t</sup> LEGG

Thomas Davis Assignee of Joseph Townsend plaint. ag<sup>t</sup> Sam<sup>11</sup> Legg Defendant in an action of the case for breach or nonperformance of a bill of Loading bearing date the 26<sup>th</sup> of June: 1671. by the s<sup>d</sup> Leggs not deliuering a horse & three [250] tight hogsheads according to the contents of s<sup>d</sup> bill of Lading nor given or delivered a just & true Account with the produce of the saide horse & caske & due interest or forbearance of the mony or pay all which is to the saide Davis his damage to the value of Sixteen pounds in mony with other due damages according to Attachm<sup>t</sup> Dat: July: 18<sup>th</sup> 1674: . . . The Jury . . . founde for the plaint. the ballance of the Defendants acco<sup>t</sup> viz: 950<sup>11</sup> of neate good Muscovado Sugar here in caske & costs of Court being twenty shillings & six pence.

Execucion issued August: 10<sup>th</sup> 1674.

[See Legg v. Davis, below, p. 504.]



PHILLIPS ag<sup>t</sup> COWELL

Henry Phillips plaint. ag<sup>t</sup> Joseph Cowell Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: July: 16<sup>th</sup> 1674. The plaint. withdrew his Accion upon the Defendants acknowledgm<sup>t</sup> of a Judgment.

PROSSER ag<sup>t</sup> HUDSON

Roger Prosser plaint. ags<sup>t</sup> Cap<sup>t</sup> William Hudson Defendant according to Attachm<sup>t</sup> Dat: July 21<sup>th</sup> 1674. The plaint. withdrew his Accion.

HANNIFORD ags<sup>t</sup> HAMBLETON

Abigail Hanniford plaint. ags<sup>t</sup> Alice Hambleton widdow & relict of William Hambleton late of Boston deceased Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July: 23<sup>th</sup> 1674: The plaint. withdrew her Accion.

BALL ag<sup>t</sup> RIGBEE

Francis Ball plaint. ags<sup>t</sup> Sam<sup>ll</sup> Rigbee Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. may 9<sup>th</sup> 1674. The plaint. withdrew his accion.

POOL &<sup>a</sup> against CLEMONTs

Joseph Pool & John Read plaint<sup>s</sup> ags<sup>t</sup> Augustin Clemonts Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: July: 21<sup>th</sup> 1674. The plaint<sup>s</sup> withdrew theire Accion.

LEVERETT ag<sup>t</sup> HALSALL

Hudson Leverett assigne of Cap<sup>t</sup> William Hudson plaint. ag<sup>t</sup> George Halsall Defendant for non paiment of Seventeen pounds & nine pence due by bill bearing date the 17<sup>th</sup> day of March. 1657. or 58. with interest & all other due damages according to Attachm<sup>t</sup> Dat: May. 13<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. twenty three pounds currant pay & costs of Court being: £2:0:6

Execucion issued Aug<sup>o</sup> 14<sup>th</sup> 1674.

HUDSON ag<sup>t</sup> PROSSER

Cap<sup>t</sup> William Hudson plaint. ag<sup>t</sup> Roger Prosser Defendant according to Attachm<sup>t</sup> Dat. July: 21<sup>th</sup> 1674. The plaintife withdrew his Accion.

HUDSON ag<sup>t</sup> PROSSER

Cap<sup>t</sup> William Hudson plaint. ag<sup>t</sup> Roger Prosser Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July: 21<sup>th</sup> 1674. The plaintife withdrew his Accion.

NANNEY ag<sup>t</sup> ROBEY

Katharin Nanney Executrix to her husband Robert Nanney deceased plaint. ag<sup>t</sup> Henry Robey who married the widdow & Executrix of Jn<sup>o</sup> Garland Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat July: 10<sup>th</sup> 1674. The plaint. withdrew her accion. [251]

HUTCHINSON ag<sup>t</sup> SANDS

Cap<sup>t</sup> Edward Hutchinson plaint. ag<sup>t</sup> John Sands Defendant for violently strikeing of him, which occasioned his Arme to swell & put him to much paine according to Attachm<sup>t</sup> Dated July 16: 1674. . . . The Jury . . . finde that the Defend<sup>t</sup> hath broken the peace: & declared they Leaue the Judgment of damages to the bench: The Magistrates finde for the plaintiffe Forty shillings in mony & costs of Court.

[See Sands v. Hutchinson p. 460, above.]

HUTCHINSON ags<sup>t</sup> WEBB

Eliakim Hutchinson plaint. ags<sup>t</sup> Thomas Webb & William Hamlen or either of them Defend<sup>ts</sup> according to Attachm<sup>t</sup> Dat. July: 23<sup>o</sup>: 1674. This Accion was continued by consent of partys & allowance of the Court till the next County Court in case they cannot agree in the meane time.

GIBBS ag<sup>t</sup> GATCHELL

Robert Gibbs plaint. ag<sup>t</sup> Sammuell Gatchell Defend<sup>t</sup> in an action of debt of six pounds three shillings & two pence in mony due by bill with all due damages according to Attachment Dated June. 16<sup>o</sup> 1674. . . . The Jury . . . founde for the plaint. six pounds three shillings & two pence in mony & costs of Court being 30<sup>s</sup> 6<sup>d</sup>

CHADWICK ag<sup>t</sup> MANNING

John Chadwick of Malden plaint. ags<sup>t</sup> Anne Manning Executrix of the Last will & Testament of m<sup>r</sup> Richard Parker Late of Boston deceased Defend<sup>t</sup> in an accion of the case for that the s<sup>d</sup> Richard Parker did about Seventeen yeares since receive from the s<sup>d</sup> Chadwick Sixteen pounds sterling for the use of m<sup>r</sup> Nicholas Parker & under pretence of being his Attourney & seuerall yeares after did giue

mee under his hand to defend mee from the claime of any under the saide Nicholas Parker but hath not performed the saide ingagement for as much as the saide Chadwick hath been forced to pay the saide Summe of Sixteen pounds with the interest thereof for sixteen yeares since to Jonathan Parker & yet am not salved per the saide Richard Parker or his Executo<sup>rs</sup> whereby J am greatly wronged & damnified to the value of about thirty pounds; with other due damages according to Attachm<sup>t</sup> Dat: July: 21<sup>th</sup> 1674 . . . the Jury . . . founde for the plaint. Nineteen pounds ten shillings in mony & costs of Court.

BISHOP ags<sup>t</sup> WHARTON

Samuel Bishop plaint. ags<sup>t</sup> Richard Wharton Defendant in an action of the case for withholding the Summe of Forty six pounds or thereabouts due for the hire of the Catch [ 252 ] Hopewell; however for the Freight of Forty hogsheads of Tobacco & five pounds four shillings for demurrage all which amounting to the value of Fifty one pounds four shillings as appeares by Agreement or Charterparty & all other due damages according to Attachm<sup>t</sup> Dat. July. 14<sup>th</sup> 1674. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

JONES ag<sup>t</sup> NEYLOR

John Jones plaint. ags<sup>t</sup> Edward Naylor Defendant in an accion of the case in that the foresaide Naylor hath forewarned Goodman Matson the Keeper of the prison of Boston to Entertaine the foresaide Jones or to Employ him in any worke or Service in his trade as to a Smith or other wayes; which is to the plaintiffes damage twenty five pound in mony & all other due damages according to Attachm<sup>t</sup> Dat July. 23 1674: . . . The Jury . . . founde for the Defendant costs of Court.

SAVAGE ag<sup>t</sup> HATHORN

Cap<sup>t</sup> Thomas Savage plaint. ags<sup>t</sup> John Hathorn of Lynn Defend<sup>t</sup> in an action of debt to the value of Fourteen pounds being the remainder of twenty eight pounds due by bill & due damages according to Attachm<sup>t</sup> Dat. July. 22: 1674. . . . The Jury . . . founde for the plaintife twenty pounds four shillings & eleven pence in mony & costs of Court being twenty six shillings & ten pence.

Execucion issued Aug<sup>o</sup> 14: 1674.

SAVAGE ag<sup>t</sup> HATHORN

Cap<sup>t</sup> Thomas Savage plaint. against John Hathorn of Lynn Defend<sup>t</sup> in an action of debt to the value of twelue pound two shillings & six pence as the remainder of the Summe of Forty pound twelue shillings & 6<sup>d</sup> due by bill & due damages according to Attachm<sup>t</sup> Dat. July: 22: 1674. . . . The Jury . . . founde for the plaintife Eighteen pounds two shillings & six pence in mony & costs of Court being twenty six shillings & six pence.

Execucion issued Aug<sup>o</sup> 14: 1674.

BAKER ag<sup>t</sup> STOODLEE

Nathaniell Baker of Hingham plaint. ag<sup>t</sup> Joseph Stoodlee Cooper according to Attachm<sup>t</sup> Dat: May: 14<sup>th</sup> 1674.

The plaint withdrew his accion.

RAWSON ag<sup>t</sup> GLOVER &<sup>a</sup>

William Rawson (that married Anne the sole daughter of Nathaniell Glover deceased & Mary his wife) plaint. against Habakkuk Glover & John Gurnell (as they are appointed guardians to the Children of the saide Glover by the County Court) Defendants in an action of the case for refusing to [ 253 ] give a just true & perticuler accompt of his or theire management of the saide Estate & his saide Rawsons fourth part or portion due to him for mony goods & Rents in his or theire hands for seuerall yeares past since that betrusement, with a just & perticuler accompt thereof with all due damages for detein- ing the same & other due damages according to Attachm<sup>t</sup> Dat: July 22 1674. . . . The Jury . . . founde for the plaintife six pounds two shillings & five pence in currant pay & costs of Court Forty five Shillings.

[ See Division of Glover's Estate, above, p. 426. A clearer idea of the terms of the will involved in this case may be obtained from Rawson v. Billing, below, p. 543. The following document, endorsed "Glouers Defense," is found in S. F. 1459.5, but may belong with the review of the same action at the next Court, for which see p. 508, below.

Whereas the Plaintiffe sueth Habakkuk Glouer, John Glouer and Pelatiah Glouer.

1. Wee Suppose Habakkuk Glouer and Pelatiah Glouer haue had no summons nor any attachment Served either on their persons or Estates.

2. John Glouer as John Glouer here is not lyable to be Sued, he being but a



legatee and not an heire to the estate being onely Coequall to the reversion, when all the debts and legacies are duely paid out of the Estate.

3. Noe man here is in a Capacity to be Sued there being noe Execution nor Administration mentioned in the processe, therefore the processe is illegal there being Executor and administrator to the estate, and also an heire to the Same.

Noe man is lyable to be Sued, to to divide another mans estate when dividable but as before, so J say still, the estate is not dividable, till all the debts and legacies be first paid, and deduction be made for what the plaintiffs father or his heires, hath receiued out of this perticuler estate, any perticuler heire not being in a Capacity to divide an estate in partnership betwene several persons Concerned, and we do not vnderstand how the now plaintiffe can Sue, who is but Concerned in a quarter part of a quarter part, the rest of the heires not being here, and not Suing, nor manifesting any doubt of any thinge, that may be still due to them, but let them fou[torn] Concerned, Come and Sue or Demaund, and if the debts and legacies be paid, and if they haue not receiued their right, they shall they haue it when it is due.

Againe, whereas the plaintiffe Sueth for the reversion and inheritance of land, which be ordered by the Court to be divided, in the yeare 1660 J answer, the Court did neuer order John Glouer to divide any lands or reuersions and Inheritance of lands, on this side the Riuer, therefore that Court order, being the ground of his action, his action is groundlesse for John Glouer, though Administrator, hath not order nor power, to divide for the reasons already mentioned, nor hath any administrator power to divide other mens lands, lying in partnership without a perticuler order from the Court, J desire also the honored Court would Consider, whether this attachment be according to law, for breefnesse, and plainnesse, one sentence seeming to depend so vpon two other Sentences before that one knoweth not which it hath reference to, as for instance the words and also the fourth part of the reversions, may haue reference, to the word attach: or to the word, heires,

Againe the Plaintiffe doth not mention what lands or where those lands are which he would haue divided, there be lands on this South Side Neponsit river, which may be in Controversy, and also lands on the north side the riuer, and therefore what the plaintiffe meaneth we know not,

But as for any order of the County Court in the yeare 1660, that land should be diuided, J answer, that order was not for John Glouer, nor yet for Habakkuk Glouer, that he should divide any lands, but only as they should grow due, otherwise, if the Court order had bene absolute, no doubt but Habakkuk Glouer would haue diuided it, but as for John Glover, he never had power of administration graunted him, on any lands in Dorchester, vnlesse it be on lands on the farme, where Roger Billing liveth, or on some lands on this Side Neponsit river, where the plaintiffe with his brethren, haue taken possession of most to themselves, and therefore we vnderstand not by the attachment what land the plaintiffe meaneth and thincke this action groundlesse,

This is a true Coppie as attests Js<sup>a</sup> Addington Cler ]

POOLE ag<sup>t</sup> GEORGE

John Poole plaint. ag<sup>t</sup> Joshua George Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: June 2<sup>d</sup> 1674. The plaint. withdrew his Accion.

PEIRSON ag<sup>t</sup> HILTON

George Peirson plaint. ag<sup>t</sup> Charles Hilton Defend<sup>t</sup> in an accion of debt for withholding thirteen thousand foote of merchantable pine boards due to him the saide Peirson or his order as will appeare under his hand & for due damage according to Attachm<sup>t</sup> Dat: June. 16<sup>th</sup> 1674. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court.

ADAMS ag<sup>t</sup> ROSSE

Alexander Adams plaint. ag<sup>t</sup> Roger Rosse Defend<sup>t</sup> in an accion of debt of Seven pounds seven shillings & four pence due by bill & due damages according to Attachm<sup>t</sup> Dat July: 21<sup>th</sup> 1674. . . . The Jury . . . founde for the plaintife Seven pounds seven shillings & four pence in mony & costs of Court.

STODDARD ag<sup>t</sup> JEWITT

M<sup>r</sup> Anthony Stoddard plaint. ag<sup>t</sup> Jeremiah Jewett one of the Executo<sup>rs</sup> of the Last will & Testament of m<sup>r</sup> Joseph Jewitt of Rowley deceased Defend<sup>t</sup> for not paying him the Summe of Eighty six pounds eight shillings four pence that Joseph Jewitt his Father was indebted to him at the time of his death as by booke will appeare with all due damages for the same according to Attachm<sup>t</sup> Dat. Aprill. 30<sup>th</sup> 1674. The Accion being called the plaintife appeared; but neither the Defend<sup>t</sup> nor his Surety appearing upon due calling the Court declared theire bond forfeited & Order the Accion to proceed to tryall according to Law. . . . The Jury . . . founde for the Defendants costs of Court.

BULL ag<sup>t</sup> LEVERETT

Henry Bull plaint. ag<sup>t</sup> Hudson Leverett Defend<sup>t</sup> in an accion of the case for non paiment of two thousand One hundred & one pound of virginia Tobacco remaining due upon a bill [254] or specialty under the hand of the saide Hudson Leverett bearing date the 14<sup>th</sup> of Decemb<sup>r</sup> 1669 & other wayes may appeare to the plaintiff<sup>s</sup> damage twenty five pounds in mony with due interest for the same with other due damages according to Attachm<sup>t</sup> Dat: July: 18<sup>th</sup> 1674. . . . The Jury . . . founde for the plaintife two thousand One hundred & one pound of good Merchantable Tobacco here with interest at

5<sup>li</sup> per<sup>c</sup> the s<sup>d</sup> Bull allowing for Freight Risco & all other necessary charges: or ten pounds Eighteen shillings mony & cost of Court being twenty nine shillings & eight pence.

Execucion issued 25 Aug<sup>o</sup> 1674.

#### RAWSON ag<sup>t</sup> COOKE

Edward Rawson of Boston plaint ag<sup>t</sup> Robert Cooke of Boston Hornbreaker Defend<sup>t</sup> for withholding a debt of twenty pounds starling mony of England due by bill of Exchange bearing date 17<sup>th</sup> of February. 1671. by him the saide Cooke charged on m<sup>rs</sup> Elinor Gallophine of London widdow who hath protested the same with all usuall just damages in such case & other damages since the s<sup>d</sup> protest: &c. according to Attachm<sup>t</sup> Dat June tenth: 1674. . . . The Jury . . . founde for the plaintife twenty five pounds five shillings in mony & costs of Court being thirty six shillings & four pence.

Execucion issued 7<sup>br</sup> 4: 1674.

#### CROWN ag<sup>t</sup> SPRAGUE

Colonell William Crown plaint. ag<sup>t</sup> Jonathan Sprague Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Aprill 29<sup>th</sup> 1674. The plaintife withdrew his Accion.

#### SAFFIN ag<sup>t</sup> EMMONS

John Saffin plaint. ag<sup>t</sup> Obadiah Emmons Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July 22<sup>th</sup> 1674. The plaint. withdrew his Accion.

#### HISKET ag<sup>t</sup> GIBBS

George Hisket plaint. ag<sup>t</sup> Benjamin Gibbs Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July. 18<sup>th</sup> 1674. The plaintife not appearing upon due calling was NonSuted. & costs granted the Defend<sup>t</sup> being thirty shillings.

Execucion issued 15: 7<sup>br</sup> 74.

#### KELLOND ag<sup>t</sup> BELCHER

Thomas Kellond plaint. ag<sup>t</sup> Jeremiah Belcher Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. July: 17<sup>th</sup> 1674. The plaint. withdrew his Accion upon the Defend<sup>ts</sup> acknowledgm<sup>t</sup> of a Judgment

SMITH ag<sup>t</sup> RUSSELL &<sup>a</sup>

John Smith plaint. ag<sup>t</sup> Cap<sup>t</sup> Thomas Russell & Jn<sup>o</sup> Dafforne Defend<sup>ts</sup> according to Attachm<sup>t</sup> Dat. July. 23<sup>d</sup> 1674. The plaint. withdrew his Accion.

## CALLEY to NOYES

Joseph Calley personally appeared in Court & acknowledged a judgment against himselfe & Estate for thirteen pounds six shillings & six pence in mony to John Noyes as Attourney to Nathaniell Oliver according to bill [ 255 ]

## DE WIT to FREAKE

John De Wit personally appeared in Court & acknowledged a Judgment against himselfe & Estate for twenty six pounds in mony to m<sup>r</sup> John Freake.

Execucion issued: 8<sup>br</sup> 19: 74.

## RUGGLES made Free

John Ruggles of Roxbury tooke the Oath of Freedom of this Colony.

## ADDINGTON Sworn Clarke

Jsaac Addington was Sworn Clarke of the County Court of Suffolke.

## Grandjury dismiss

The Grandjury brought in their bill of presentm<sup>ts</sup> July: 28<sup>th</sup> & were dismissed for this Court.

Order about S<sup>r</sup> THO: TEMPLES Estate

Whereas S<sup>r</sup> Tho: Temple Late of Boston in New-England deceased did Nominate the Hono<sup>rd</sup> Jn<sup>o</sup> Leverett Esq<sup>r</sup> Cap<sup>t</sup> Tho: Lake m<sup>r</sup> John Richards & m<sup>r</sup> Jn<sup>o</sup> Hull as Executors of his Last will; which hee Left in New-England; which Executors upon the probate of s<sup>d</sup> Will haue entred their perticuler renunciation of their s<sup>d</sup> Executorship: Upon which the Court judged it meete for the Securing of the s<sup>d</sup> Estate in New-England for the benefit of such as may make any Legall demand to the same or any part thereof) to Order & appoint & doe hereby Order & appoint Cap<sup>t</sup> Thomas Lake m<sup>r</sup> John Richards



& m<sup>r</sup> John Hull to take an Inventory of the s<sup>d</sup> Estate & bring it into the Court & to act in all respects as Administrato<sup>rs</sup> to the s<sup>d</sup> Estate: And judging (by the pu<sup>s</sup>ent Information given) that the saide Estate will proue insolvant doe hereby Authorize & Empower m<sup>r</sup> Anthony Stoddard Cap<sup>t</sup> W<sup>m</sup> Davis & Cap<sup>t</sup> Edward Hutchinson as a Committee to receive the claimes of the Credito<sup>rs</sup> to that Estate to Audit & pass theire Accounts The Credito<sup>rs</sup> who are in this Country to bring in theire claimes to the s<sup>d</sup> Committee within six months & the Credito<sup>rs</sup> who are in England to bring in theire claimes within Eighteen months next following. The s<sup>d</sup> Committee to appoint time & place for receiving the saide claimes And all persons concerned therein are hereby required to attend the meetings of the s<sup>d</sup> Committee to that end & that this Order bee posted at Boston Salem & piscataqua.

#### WHITE Fin<sup>d</sup> 5<sup>li</sup> halfe remitted

Benjamin White convict in Court of assayling Jabez Buckminster upon the highway commanding him to stay being in the duske of the Evening, taking his horse by the bridle & pulling him off his horse. The Court Sentenced him to pay five pounds in mony as a fine to the County & Fees of Court standing committed untill the Sentence bee performed: Upon his humble petition The Court afterwards remitted halfe of his Fine.

#### Dedham Commission<sup>rs</sup>

Cap<sup>t</sup> Daniel Fisher, W<sup>m</sup> Avery & Richard Ellice are appointed Commission<sup>rs</sup> for the Town of Dedham to end small causes for the yeare Ensuing.

#### JRONS Fined 20<sup>s</sup>

Thomas Jrons committed to prison to answer for his procuring Richard Barnhum to publish a marriage between him s<sup>d</sup> Jrons [256] and Mary Arnold, the s<sup>d</sup> Jrons not having consent of the mayde or her parents soe to doe of which hee was convict in Court The Court Sentenc<sup>d</sup> him to pay twenty shillings in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed.

#### BARNHUM Fined 10<sup>s</sup>

Richard Barnhum being bound over to Answer for his publishing the baines of Marriage between Tho: Jrons & Mary Arnold; which

hee Own<sup>d</sup> in Court The Court Sentenc<sup>d</sup> him to pay ten Shillings in mony as a Fine to the County & fees of Court standing committed untill the Sentence bee performed.

#### BISHOP to RICHARDS

Samuel Bishop of Ipswich personally appeared in Court July 29<sup>th</sup> 1674 & acknowledged a Judgment against himselfe & Estate unto m<sup>r</sup> John Richards for twenty eight pounds ten shillings & six pence in mony according to bill, with interest bearing date the Last day of Aprill 1672 @

#### LOVELLS Forfiture remitt<sup>d</sup> upon paying: 20<sup>s</sup>

Upon the request of John Lovell of Weymoth & James Lovell his brother who was also his Surety) made to this Court for a remission of the forfiture of their bonds declared forfeited by the Last County Court upon John Lovells non appearance The Court was pleased upon their payment of twenty shillings to the Treasuro<sup>r</sup> to remit the saide Forfiture.

#### COWELL to PHILLIPS

Joseph Cowell personally appeared in Court July: 30: 1674 & acknowledged a Judgment against himselfe & Estate unto m<sup>r</sup> Henry Phillips for Nine pounds Eleven Shillings mony.

Execucion issued 7<sup>br</sup> 12: 1674.

#### [ Freeman Sworn ]

Clement Bate of Hingham tooke the Oath of Freedom of this Jurisdiction.

#### BENDALL Sworn Record<sup>r</sup>

Free Grace Bendall was Sworn Record<sup>r</sup> of the County of Suffolke.

#### [ Commissioners Sworn ]

Cap<sup>t</sup> Daniel Fisher & Sergeant Richard Ellice were Sworn Commission<sup>rs</sup> for the Town of Dedham.

#### CHANDLERS Sentence

John Chandler & Elisabeth Chandler Son & daughter of John Chandler sen<sup>r</sup> of Roxbury being presented to this Court for wanton

uncivill & unseemely carriages The Court upon hearing of the case, what was proved & what was Owned by themselues doe Sentence the s<sup>d</sup> John & Elisabeth to bee severely whip't by their Father & mother in their own house in pu'sence of the Constable & John Stebbins The Father to correct his Son & the mother her daughter with such a Number of Stripes as the Constable & s<sup>d</sup> Stebbins shall judge meete not exceeding fifteen Stripes apeice & that the s<sup>d</sup> Children bee put asunder & not suffered to dwell together till the Court take further Order.

Milton und<sup>r</sup> a pœnalty

The Town of Milton being presented for not providing a watch house according to Law: Answer being made that they were building one The Court Orders that the s<sup>d</sup> Watch house bee compleated & finished by the next Court of this County. [ 257 ] under the pœnalty of Fifty shillings to bee forfeited to the County

BELCHER to KELLOND

Jeremiah Belcher sen<sup>r</sup> of Ipswich personally appearing in Court acknowledged a judgment against himselfe & Estate unto Thomas Kellond of Boston Merchant for the Summe of thirty pounds in mony being for soe much remaining due upon a bill of £47:15:6 bearing date Novemb<sup>r</sup> 5: 1663.

Execution issued 21<sup>o</sup> 8<sup>br</sup> 1678

PRICE his Guardian

Thomas Price appeared in Court & made choise of m<sup>r</sup> John Joyliffe for his guardian which hee accepted & the Court allowed of

Order ab<sup>t</sup> PRICE his Estate

Whereas Richard Price of Boston in New-England; who Lately dyed in Nevis did Nominate m<sup>r</sup> Jn<sup>o</sup> Joyliffe & his wife Elizabeth Price Executo<sup>r</sup> & Executrix of his Last will & Testament they both appearing before this Court did enter their renunciation of their s<sup>d</sup> Executorship. Upon which the Court granted Administration of the s<sup>d</sup> Estate unto m<sup>r</sup> William Tayler and m<sup>r</sup> John Freake in behalfe of themselues & the other Credito<sup>rs</sup> & being informed that the s<sup>d</sup> Estate would proue insolvant; doe Order & appoint Cap<sup>t</sup> Tho: Lake

Cap<sup>t</sup> Samuel Scarlet & m<sup>r</sup> Tho: Kellond as a Committee to receive the claimes of the Credito<sup>rs</sup> to that Estate to Audit & pass theire Accounts, the Credito<sup>rs</sup> who are in New-England to bring in theire claimes to the saide Committee within six months & the Credito<sup>rs</sup> who are in England to bring in theire claimes within twelue months next following, the saide Committee to appoint time & place of meeting for receiving the saide claimes & all persons concerned are hereby required to attend the meetings of the s<sup>d</sup> Committee to that end.

Order ag<sup>t</sup> making use of Evidences in more cases then one

Whereas this Court have observed & taken notice of a great inconveniency arising, by partys (having actions upon tryall in Court) who frequently doe desire that the same Evidences which are put in in one case, should bee made use of in another, & thereby make a disorder & confound both the Jury & Officers in sorting the papers: The Court doe hereby Order & declare that noe person whatsoever hence forward shall make use of the same Evidences in one case which hee or they haue given in in another; but shall either put in New Evidences or Copies of such as hee had given in to a former case.

#### Hingham Commission<sup>rs</sup>

Deacon Jn<sup>o</sup> Levit Daniel Cushing & Edmund Pitts are appointed Commission<sup>rs</sup> for the Town of Hingham to end small causes for the yeare ensuing.

#### LINCOLN Sentenc<sup>d</sup>

Sammuell Lincoln of Hingham bound over to this Court to answer for his peeling of an apple tree & cutting off the Eares of a horse belonging to Nathaniel Baker: The Court on hearing w<sup>t</sup> was alleaged & proved ag<sup>t</sup> him Sentenc<sup>d</sup> him to bee admonish't & to pay fees of Court standing committed untill y<sup>e</sup> Sentence bee perform<sup>d</sup>. [258]

#### LEVIT Admonish't

Josiah Levit of Hingham being presented for committing Fornication with a daughter of Goodman Brookes of Scituate formerly Servant to Nathaniel Baker of Hingham: The Court on hearing what was alleaged & proved against him; as also the Evidences produced



by him; doe Sentence him to bee admonished & to pay such charges of prosecution as shalbee allowed of by the Court paying fees of Court standing committed untill the Sentence bee performed.

#### HOPKINS Sentenc<sup>d</sup>

William Hopkins of Roxbury being presented for offering both abuse in words & actions unto Deliuerance Dunckin the wife of Samuel Dunckin of Roxbury: The Court on hearing of what was alleaged & proved against him in the case doe Sentence him to bee whip't with ten stripes & to pay fees of Court standing committed untill the Sentence bee perform<sup>d</sup>.

#### HUBBERT Sentenc<sup>d</sup>

John Hubbert of Roxbury presented for drunkenness & boasting of his making another man drunck The Court upon hearing of what was alleaged & proved ag<sup>t</sup> him in the case doe Sentence him to pay ten shillings in mony as a fine to the County & to give in bond with Sureties of 20<sup>li</sup> for his good behavio<sup>r</sup> untill the next Court of this County standing committed untill the Sentence bee performed if hee can finde noe Sureties then take his own bond.

#### OKKINGTON present<sup>d</sup>

William Okkington being presented for drunkenness The presentment not being proved fell.

#### PRISE Sentenc<sup>d</sup>

Robert Prise being bound over to this Court to answer for his committing Fornication with Francis Bacon by whome shee hath had a bastard Childe: The Court upon hearing what was alleaged & proved ag<sup>t</sup> him in the case doe declare him to bee the reputed Father of the Childe Lately born of the body of Francis Bacon according to Law & Order him to pay 2<sup>s</sup> 6 in mony per weeke towards the maintenance of s<sup>d</sup> Childe from the time of its birth till the Court take further Order & to pay fees of Court standing committed untill this Sentence bee performed. Goodman Gurney of Dorchester engaged in Court to see the saide payments performed.

BACON Sentenc<sup>d</sup>

Francis Bacon convict by her own confession in Court of committing Fornication with Robert Prise by whome shee hath had a bastard Childe: The Court Sentenc<sup>d</sup> her to bee whip't at Dorchester upon a Lecture day with 15 stripes & to pay fees of Court.

GULLIV<sup>r</sup> Sentenc<sup>d</sup>

Samuel Gulliver of Milton convict in Court of stealing [ 259 ] a horse from Sammuel Wadsworth. The Court Sentenc<sup>d</sup> the s<sup>d</sup> Gulliver to pay treble damages according to Law being nine pounds in mony: And whereas the saide Wadsworth hath illegally received his horse again, hee is to haue but three pounds besides his horse the other three pounds is to bee paide in mony as a fine to the County by the saide Gulliver & to pay fees of Court standing committed untill the Sentence bee performed.

## HAUGH Fined

Samuel Haugh being complained of by Lydia Thwaite his Sister Walkers maide for unreasonably beating of her, Shee showing the Effects of the blows by blackness & blueness in the flesh; The s<sup>d</sup> Haugh Owning in Court that hee did beate her & through his passion too unreasonably The Court Sentenc<sup>d</sup> him to pay five shillings in mony as a fine to the County & ten shillings in mony to the maide; with fees of Court standing committed untill the Sentence bee performed.

## TEBO Sentenced

Joseph Tebo committed to prison to answer for his stealing of nine pounds in mony & two gold rings valued at three pounds from Rowland Gideon & Daniel Barrow; which the s<sup>d</sup> Tebo confessed in Court: The Court Sentenced him to bee whip't w<sup>th</sup> twenty stripes & to pay Forty Shillings in mony as a fine to the County & to pay unto Rowland Gideon & Daniel Barrow the Summe of thirty six pounds in mony (whereof they haue received £5:3:4 being that threefold restitution that the Law requires & to pay fees of Court & prison standing committed untill the Sentence bee performed.

## MAHUE &amp; TUCKERMAN bond forfeited

Mary Mahue & John Tuckerman being bound jointly & seuerally in a bond of five pounds mony for the saide Mahues personall appearance at this Court: The saide Mahue being called Tuckerman appeared & made answer She was escaped, Upon which the Court declared their bond Forfeited.

SHELDRAK RICHARDS & BEW<sup>rs</sup> bond forfeit<sup>d</sup>

Henry Sheldrack being bound over to this Court in the Summe of: 10<sup>li</sup> in mony & Humphry Richards & John Bewers being bound as Sureties in 5<sup>li</sup> apeice mony that the s<sup>d</sup> Sheldrack should appear at this Court to answer for his Living in a course of uncleanness with Ann Egington: When being called to answer for the same his Sureties made answer hee was escaped: The Court declared both principall & Sureties bond forfeited & upon the petition of the Sureties The Court afterwards remitted their bonds upon their payment of five pounds in mony within one weekes time, unless they take the principall & recover of him then to pay the whole ten pounds. [260]

WOOLASTON Sentenc<sup>d</sup>

John Woolaston being committed to prison to answer for his stealing of two Shirts & a Neckcloth from Enoch Wiswall of Dorchester valued at thirty Shillings; as also from James White of Dorchester three peeces of Linnen cloth valued at four pounds one Shilling; all which hee confessed in Court: The Court Sentenced him to pay twenty Shillings in mony as a fine to the County & to restore unto Enoch Wiswall his Shirts & Neckcloth again & to pay him twenty Shillings in mony & to restore to James White his cloth again & to pay unto him Fifty four shillings in mony being that threefold restitution that the Law requires & to pay fees of Court & prison standing committed untill the Sentence bee performed.

## JARRETS bond forfeited

James Jarret being bound over to this Court to answer for seuerall misdemeanors & not appearing upon due calling The Court declared his bond of twenty pounds in mony to bee forfeited.

## Committee for deviding WARDS Land

Cap<sup>t</sup> Edward Hutchinson, Jonathan Balston & John Noyse are Ordered & appointed as a Committee to make an equall division of the Land Late the Land of Benj<sup>n</sup> Ward deceased; which is still undevided between Stephen Butler & W<sup>m</sup> Holowell & to make their Return to the Court.

[Litigation concerning this estate will be found entered in the session of July, 1679, Hollowells v. Butler, below, p. 1029.]

## AMBROSS &amp; GIBBS's bond Forfited

Samuel Ambross being bound over to this Court in 10<sup>li</sup> in mony and m<sup>r</sup> Robert Gibbs as his Surety in 10<sup>li</sup> in mony to answer the complaint of Roger Rose for his unjustly taking & deteining his cloaths & severall goods from him: The saide Ambross not appearing upon due calling The Court declared his & his Sureties bond to bee Forfited.

Order for Execucion ag<sup>t</sup> SPRAGUE

The Court Orders that the Clarke grant Execucion against the Estates & persons of Jonathan Sprague & his Father for the Satisfaction of their bonds forfited, to bee paide to the Treasuro<sup>r</sup>

PUNNELL Sentenc<sup>d</sup>

Mary Punnell being bound over to this Court to answer for her absenting herselfe from the Service of her Master Tho: Holman of Milton & journeying about the Country with James Jarret, of which Shee was convict in Court & being committed to prison by the Court made an Escape: The Court Sentenced her that if any time hereafter Shee shalbee found within the Limits of Dorchester or Milton that Shee bee forthwith apprehended by the Constable and whip't with thirty Stripes.

## LANGBURY admonish't

John Langbury committed to prison for his Selling of three quarts of beere to Indians: Owned in Court that soe hee did but saide it was small beere of a penny a quart. [261] The Court Sentenced him to bee admonished & to pay fees of Court & prison standing committed untill the Sentence bee performed.



JOSIAH Indian Sentenc<sup>d</sup>

Josiah Indian being committed to prison to answer at this Court for his wounding of another Indian with a cutlash w<sup>ch</sup> hee Owned in Court. The Court Sentenc<sup>d</sup> him to bee whipt w<sup>th</sup> ten Stripes or to pay ten Shillings in mony fine to the County & to pay for the cure of the wounded Indian & all other damages to pay fees of Court & prison standing committed untill the Sentence bee performed.

JOSEPH Indian Sentenc<sup>d</sup>

Joseph Indian being committed to prison to answer at this Court for that hee having a wife by whome hee hath had two Children hath fve dayes since in Boston taken another Squaw with whome hee liues & keepes company as his wife; which hee Owned in Court: The Court Sentenc<sup>d</sup> him to bee seuerely whip't with twenty Stripes & to pay fees of Court & prison standing committed untill the Sentence bee performed.

AWK-WHEW Indian Squaw Sentenc<sup>d</sup>

Awk-whew Indian Squaw, standing committed to prison to answer at this Court for her keeping company with Joseph Indian as his wife when hee hath another wife that is Living; which Shee Owned in Court: The Court Sentenc<sup>d</sup> her to bee whipt with Fifteen Stripes & to pay fees of Court & prison standing committed untill the Sentence bee performed.

## JOB Indian discharged

Job Indian being committed to prison to answer at this Court the complaint of Clemont Bate of Hingham for stealing a paire of Stockins & seuerall other things out of the house of s<sup>d</sup> Bate: Upon hearing of the case the matter not being fully proved The Court Orders the s<sup>d</sup> Job to pay fees of Court & prison & soe discharge him.

PEGGY Fin<sup>d</sup> 10<sup>li</sup> & bound to y<sup>e</sup> behavio<sup>r</sup>

Edward Peggy being bound over to this Court to answer what should bee alleaged & proved against him for using indirect meanes by powders or other wayes unlawfull to Engage the affections or desires of women kinde to him & for begetting Ruth Henningway of Roxbury with Childe: The Court on due consideration of what was

alleaged & proved against him for his making Suite to & drawing away the affections of Ruth Henningway; as also the daughter of Robert Sanford without first obtaining theire parents consent doe Sentence the s<sup>d</sup> Peggy to pay ten pounds in mony according to Law as a fine to the County & to giue in bond of 80<sup>li</sup> with Sureties for his good behavio<sup>r</sup> till the next Court of this County & then to appeare & abide the Order of the Court & to pay fees of Court Standing committed untill the Sentence bee performed

#### HENNINGWAY bound over

Ruth Henningway is Ordered to renew her bonds for her [262] appearance at the next Court of this County & abiding the order of the Court or else to bee committed to prison. Shee renewed her bond

#### BRADLEY presented

Nathan Bradley of Dorchester being presented for Selling Sider without Licence; hee appearing Owned the presentment; but excused his act with his having the Selectmens approbacion in order to the Courts granting him A licence & did ignorantly act upon that: The Court accepting his excuse cautioning of him dismist him.

#### EDMUNDS Sentenc<sup>d</sup>

Andrew Edmunds, being bound over to this Court to answer the charge of Benj<sup>n</sup> Gibbs about stealing a Silver porringer. The Court upon hearing what was alleaged & proved against him for confœderating with Joseph Waters in stealing a Siluer porringer from the s<sup>d</sup> Gibbs, part whereof was sold at m<sup>r</sup> Hulls Shop valued at twelue Shillings: Sentenced the saide Edmunds to pay unto m<sup>r</sup> Benj<sup>n</sup> Gibbs in mony the Summe of thirty six shillings being that threefold restitution the law requires & to pay fees of court standing committed untill the Sentence bee performed. And whereas the Court is informed that the saide Edmunds hath a wife in Holland & that hee hath remained here a considerable time from her: The Court Orders him to return to his wife by the next Court of this County under the pœnalty expressed in the Law.

[This case had unexpected consequences for Waters. See the order about his horse, below, p. 490, and his sentence, below, p. 493.]

## [ Order about HAWKINS ]

The Court refers the further Examination of Mary Hawkins to the Commission<sup>rs</sup> of Boston to bee returned to the next County Court or sooner if it may bee & Order her mittimus to bee returned to the Keeper.

The Court Adjourned from Saturday the first to Munday the 3<sup>d</sup> of August: 1674: at Eight a clock in the morning.

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3: August: 1674 @

The Court met according to Adjournment.

## MEARES admonish't

James Meares being presented for meeting with seuerall others at a quakers meeting upon a lords day in Aprill Last past at the house of Nicholas Moulder; which hee Owned in Court; but saide hee onely went in hearing of them as hee went down towards the North meeting house but when hee was in staied there: The Court admonish't him Ordered him to pay fees of Court & soe discharged him.

SPARKES Sentenc<sup>d</sup>

Margery Sparkes being committed to prison to answer for her committing Fornication with John Lorin by whome shee hath had a bastard Childe; which Shee confessed in Court The Court Sentenced her to bee whipt with ten Stripes or to pay Fifty Shillings in mony as a [ 263 ] Fine to the County & fees of Court standing committed untill the Sentence bee performed And the Court Orders her Master Thomas Walker to pay her prison charges.

## HELMAN admonish't

Hannah Helman presented among seuerall others for meeting at a quakers meeting upon a Lord's day in aprill Last past at the house of Nicholas Moulder; which Shee Owned in Court, it being the first conviction The Court admonished her, ordered her to pay fees of Court & discharged her.

## WILMOTS Estate Setled

For the Setlement of the Estate of the late John Wilmot deceased the Court Orders that John Wilmot his Sonn haue the house & Land

neere the mill Creeke, to bee kept in good repaire till the saide John come of age, the rest of the saide Estate is confirmed upon John Smith (who married the Relict of s<sup>d</sup> Wilmot) in right of his wife to bee disposed of by him for his use for ever.

THORNTON Fined 50<sup>s</sup>

Hanna Thornton being sent for before the Court to answer for her committing Fornication & having a bastard Childe which shee Owned in Court & charged Joseph Pollee to bee the Father thereof: The Court Sentenced her to bee whip't with ten Stripes or to pay Fifty Shillings in mony fine to the County & fees of Court standing committed untill the Sentence bee performed.

SMITH Sentenc<sup>d</sup>

Dorcas Smith being bound over to this Court to answer for many cursing reviling & evill speeches, & other misdemeano<sup>rs</sup> of which Shee was convict in Court: The Court Sentenced her to bee severely whip't with fifteen Stripes & to pay fees of Court standing committed untill the Sentence bee performed.

SOMES Fined 20<sup>s</sup>

John Somes being presented by the Grandjury for meeting at a quakers meeting upon two seuerall Lords dayes at the house of Nicholas Moulder in Boston, it being after due conviction thereof formerly The Court Sentenc<sup>d</sup> him to pay twenty Shillings in mony fine to the County according to Law & fees of Court standing committed untill the Sentence bee performed.

HOOPER Fined 20<sup>s</sup>

Mary Hooper presented as aboue, it being also after former conviction The Court Sentenc<sup>d</sup> her to pay twenty shillings in mony as a fine to the County & fees of Court standing committed &<sup>a</sup> The Court afterwards see cause to respite her fine till further order, & Order her release from prison.

AMY Fin<sup>d</sup> 20<sup>s</sup>

Matthew Amy presented as aboue, it being also after form<sup>r</sup> conviction: The Court Sentenc<sup>d</sup> her to pay twenty Shillings in mony as



a fine to the County & fees of Court standing committed. The Court upon her husbands petition respites her fine till further Order & Order her release from prison. [264]

STRATTON Fin<sup>d</sup> 20<sup>s</sup>

Eliford Stratton presented for meeting at a quakers meeting upon two seuerall Lords dayes in aprill last past at the house of Nicholas Moulder in Boston; which Shee Owned in Court & being after former conviction The Court Sentenced her to pay twenty Shillings in mony as a fine to the County & fees of Court standing committed untill the Sentence bee perform<sup>d</sup>

MOULDER Fined 20<sup>s</sup>

Christian Moulder presented as aboues<sup>d</sup> which Shee Owned in Court, it being after former conviction The Court Sentenc<sup>d</sup> her to pay twenty Shillings in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed.

DUE Fined: 10<sup>s</sup>

Esther Due presented for once meeting as aboues<sup>d</sup> which Shee Owned in Court, it being after former conviction The Court Sentenc<sup>d</sup> her to pay ten Shillings in mony as a fine to the County & fees of Court, standing committed untill the Sentence bee performed.

MILLS Admonish't

Mary Mills being presented as aboues<sup>d</sup> which Shee Owned in Court; not having been formerly convict thereof: The Court admonished her Ordered her to pay fees & soe discharg<sup>d</sup> her.

SWIMSTEED Admonish't

John Swimsteed present<sup>d</sup> as aboues<sup>d</sup> which hee Own<sup>d</sup> in Court; not having been formerly convict thereof: The Court admonished him Ordered him to pay fees & discharged him.

SOMES Admonish't

The wife of John Somes present<sup>d</sup> as aboues<sup>d</sup> which Shee Owned in Court; not having been formerly convict thereof The Court admonished her, Ordered her to pay fees & soe discharged her.

Order to BENJ<sup>a</sup> GILLAMS Adm<sup>rs</sup>

The Court Orders that the Administrato<sup>rs</sup> to the Estate of the late Benj<sup>a</sup> Gillam deceased, doe bring in an Account of that Estate to the next Court of this County on the first day of s<sup>d</sup> Court, that soe there may bee a Settlement & division made of the same.

VEERIN Fined & bound to good behavio<sup>r</sup>

John Veerin being presented by the Grandjury for cursing Swearing & common rayling, & Evidence of ill behavio<sup>r</sup> in his family appearing: The Court Sentenc<sup>d</sup> him to pay twenty Shillings in mony as a fine to the County; & to giue in bond with Sureties of Forty pounds to bee of good behavio<sup>r</sup> till the next Court of this County & to pay fees of Court standing committed untill the Sentence bee performed. The s<sup>d</sup> Jn<sup>o</sup> Verin as principall in £20 & James Brading & Dan<sup>ll</sup> Turill sen<sup>r</sup> in £10: apeice were accordingly bound.

## Order about WATERS his horse

Whereas Joseph Waters of Lancaster, who stole a peice of plate from m<sup>r</sup> Benj<sup>a</sup> Gibbs of Boston valued at: 40<sup>s</sup> [ 265 ] hath made his Escape & although warrant is out for his apprehension doth still abscond & is concealed: The Constable of Lancaster having Seized a horse of the saide Waters's & hath him in his custody, who is at expence & charge in keeping & Looking after him: The Court Orders that the saide Constable doe deliver the saide horse to m<sup>r</sup> Benj<sup>a</sup> Gibbs at apprizement by men indifferently chosen.

[ See above, p. 486, and below, pp. 493, 512.]

Order ab<sup>t</sup> Salt in m<sup>r</sup> WHARTONS custody

Vpon the information of m<sup>r</sup> Richard Wharton, that as hee was Constable about two yeares since, hee did by virtue of his Office attach a parcell of French Salt as the Estate of Elder Jn<sup>o</sup> Wiswall at the Sute of Thomas Clarke Late of Plimouth & secured the same in m<sup>rs</sup> Olivers Warehouse; The s<sup>d</sup> Wiswall & Clarke both of them refusing to receive or take care thereof: The Court Orders & Empowres m<sup>r</sup> Richard Wharton to make Sale & dispose of the same & return the mony into the Court with an account of charge upon the same.

## BEALES Licence

Nathaniell Beale of Hingham had his Licence renewed for the yeare ensuing to keepe a house of publike entertainm<sup>t</sup> to sell wine & strong beere by retail for the yeare Ensuing & hee bound himselfe as principall in ten pounds & Josiah Hobart as Surety in five pounds bound himselfe to the Treasuro<sup>r</sup> of the County of Suffolke for the s<sup>d</sup> Beales observance of his Licence.

SANDYS Fined 6<sup>s</sup> 8<sup>d</sup>

John Sandys being bound over to this Court to answer for his breaking the peace in striking Cap<sup>t</sup> Edw<sup>d</sup> Hutchinson; which hee confest in Court: The Court Sentenced him to pay six Shillings & eight pence in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed.

## EATON purged by Oath

Elizabeth the wife of Jabez Eaton being accused by an Indian for selling him three quarts of strong beere for which hee paide six pence in mony: The Court Orders that the saide Eaton doe purge herselfe by her Oath or that Shee bee whip't with ten stripes or pay twelue pounds in mony as a fine to the County & fees of Court standing committed untill the Sentence bee performed. The s<sup>d</sup> Elisabeth tooke her Oath according to Law.

The Court adjourned from Tuesday the 4<sup>th</sup> to Thursday the 20<sup>th</sup> of August, at nine a clock in the morning. [266]

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August 20<sup>th</sup> 1674 @

The Court met according to Adjournment.

Present

JN<sup>o</sup> LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>

EDW: TYNG

SIMON BRADSTREET Esq<sup>r</sup>

W<sup>m</sup> STOUGHTON Esq<sup>rs</sup>

[ CLARKE Sentenced ]

Alice Clarke widdow convict in Court by her own confession of Selling Strong beere without Licence The Court Sentenc<sup>d</sup> her to pay five pounds in mony fine to the County according to Law & fees of Court Standing committed untill the Sentence bee performed.

CONNIGRAVE Fin<sup>d</sup> 5<sup>li</sup>

Elizabeth Connigrave convict of selling Strong beere without Licence The Court Sentenc<sup>d</sup> her to pay five pounds in mony fine to the County according to Law & fees of Court standing committ<sup>d</sup> untill the Sentence bee performed.

Order ab<sup>t</sup> HITT

Jn Answer to the request of Anne Hitt widdow & Administratrix to the Estate sometime Eliphalet Hitts of Boston deceased that Shee might haue Liberty to dispose of & put to Sale some part of that Estate for the paiment of debts & Legacies & maintenance of herselfe & Children: The Court Orders & Empowres the saide Anne Hitt (with the consent & advice) of those that are Sureties for her true Administracion upon the saide Estate) to dispose of & put to Sale the house & ground at Charlestown valued in the Inventory at £:170. Shee rendring an Account of s<sup>d</sup> Sale unto the Court of this County.

## Order for DEERINGS appearance

The Court Orders that Mary Deering widow & administratrix to the Estate of Samuel Deering Late of Brantery deceased doe appeare at the next Court of this County upon the 6<sup>th</sup> day of the weeke to answer the complaint of Joseph Adams exhibited to this Court in his petition & that in the meane time Shee alienate none of the s<sup>d</sup> Estate.

m<sup>r</sup> GIBBS his Forfiture remitt<sup>d</sup> upon paiment of: 20<sup>s</sup>

Jn Answer to the petition of m<sup>r</sup> Robert Gibbs The Court was pleased to remit the forfiture of his bond of 10<sup>li</sup> declared forfeited at this Court at there former Session upon the non appearance of Samuel Ambross for whome hee was bound upon the s<sup>d</sup> m<sup>r</sup> Gibbs his paiment of 20<sup>s</sup> in mony to the Treasuro<sup>r</sup> of the County.

Order ab<sup>t</sup> m<sup>r</sup> WHARTON & GIBBS there papers

M<sup>r</sup> Richard Wharton & m<sup>r</sup> Benj<sup>a</sup> Gibbs appearing in Court & declaring that whereas they had severall actions depending this Court that had agreed them amongst themselves and desired that they might haue there papers delivered out again m<sup>r</sup> Wharton also declared the action depending between Augustin Mellot & m<sup>r</sup> Gibbs was agreed between them & did in Mellots behalfe desire the deliuary



of those papers out again & that the verdicts of the Jury given in in [ 267 ] their severall cases might bee made Null; which the Court granted and Ordered the delivery of their papers to the severall parties accordingly: they declaring that they withdrew their actions.

[See the numerous Wharton v. Gibbs cases earlier in the session, above, pp. 463-4.]

#### WATERS Sent<sup>t</sup>

Joseph Waters being bound over to the Court to answer for his stealing a silver porringer from m<sup>r</sup> Benj<sup>a</sup> Gibbs & being called to answer for the same The Court upon hearing of what was alleaged & proved against him & what himselfe Owned in the case Sentenc<sup>d</sup> the saide Waters to pay Forty Shillings in mony as a fine to the County & to pay to m<sup>r</sup> Benj<sup>a</sup> Gibbs £:5:8:0. in mony being that threefold restitution which the Law requires (the saide Gibbs to haue his peice of plate, which was sold to m<sup>r</sup> Hull returned to him again) & to pay fees of Court standing committed untill the Sentence bee performed: and the Court declare that they discharge Andrew Edmunds from the Sentence of the Court declared against him at their former Session & from his imprisonment; The s<sup>d</sup> Waters having cleered him in open Court.

[See above, p. 490, and Whetcomb v. Gibbs, p. 512.]

#### CAWLEY Sent

Nicholas Cawly being imprisoned till this Court to answer the complaint of m<sup>r</sup> Tho: Brattle for stealing three setting poles & cutting & taking of some of the wharves before the Town of Boston, a peice of a New hauser; which were valued at Eighteen Shillings: The Court on hearing what was alleaged & proved against him & what himselfe Owned, doe Sentence the s<sup>d</sup> Cawley to bee whip't with twenty Stripes & to pay unto m<sup>r</sup> Tho: Brattle Fifty Shillings in mony being that threefold restitution which the Law requires returning the saide Brattle his two poles again & to pay fees of Court & prison standing committed untill the Sentence bee perform<sup>d</sup>

#### Court Order ab<sup>t</sup> m<sup>r</sup> Rock

Upon farther consideration of the Account presented by m<sup>r</sup> Joseph Rock to a former Court of his Administracion to the Estate of m<sup>r</sup>

Jn<sup>o</sup> & M<sup>rs</sup> Martha Coggan deceased & the former Orders of Court passed thereupon for m<sup>r</sup> Rocks paiment to the Guardians of m<sup>r</sup> Thomas Robinsons Children the Summe of £:209:04:0 to each guardian his due proportion thereof: The Guardians declaring theire willingness to refer the further consideration thereof to the Court judge meete to allow to m<sup>r</sup> Rock £:38:18:8. more then what they haue formerly allowed him out of the Estate of the s<sup>d</sup> m<sup>r</sup> Coggan & doe take of & rebate £:29:4:0 of the Summe of £:209:4:0 ordered by the Court for the saide Rock to pay to the s<sup>d</sup> Guardians & the other £:9:14:8 to bee deducted out of that part of the s<sup>d</sup> Estate ordered to m<sup>r</sup> Rock as guardian to one of s<sup>d</sup> Robinsons Children.

[Consult Index for the numerous references to Rock and Robinson litigation.]

#### Order ab<sup>t</sup> PUNNELL

The Court Orders the Clarke to issue out a warrant to the Constables of Dorchester Milton & Brantry to apprehend Mary Punnell & to bring her to prison. [268]

#### SAWDY'S Estate Setled

Ann Holliday widow (& Administratrix to the Estate of her former husband John Sawdey deceased) moving this Court for a division & Setlement of the Estate left by her saide husband Sawdey between herselfe & the five Children Shee had by saide Sawdey, three of which being grown up appeared in Court & did mutually choose theire s<sup>d</sup> mother to bee theire guardian which Shee accepted & the Court approved of: And the Court Ordered the saide Anne to pay out of the Estate unto John Sawdey the eldest Sonn five & twenty pounds when hee shall come of age & to the other four Children of the s<sup>d</sup> Sawdey to each of them twelve pounds ten Shillings as they shall arrive at theire respective ages; and confirme the rest of the Estate upon the widow for ever Shee to haue the emprovement of the whole till the Children come to age.

#### Order ab<sup>t</sup> SPRAGUE & PEIRCE

Jn Answer to the petition of William Sprague: The Court Orders that W<sup>m</sup> Sprague & Mihel Peirce doe pay twenty pounds in mony to the Treasuro<sup>r</sup> of the County towards paying of charges expended

about Jonathan Sprague for whome they were bound & theire bonds declared forfeited & respit any farther proceeding till farther Order upon condicion they pay ten pounds apeice in mony

Order ab<sup>t</sup> TEBO

Jn Answer to the petition of Rowland Gideon & Daniel Baru The Court abates the fine of Forty Shillings imposed on Joseph Tebo & Order that the s<sup>d</sup> Tebo bee delivered unto the Petition<sup>rs</sup>

KIBBY'S Fine abated conditionally

Jn Answer to the Petition of Edward Kibby. The Court abate his fine of 12<sup>li</sup> imposed on him by the County Court in January last & Release his Land made over for Security thereof provided hee forthwith pay five pound in mony to the Treasuro<sup>r</sup> of the County.

This Court dissolved.

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BARTON to HOBBY

Edward Barton of Capebonne Waggon<sup>1</sup> Fisherman personally appeared August 25<sup>th</sup> 1674 before John Leverett Esq<sup>r</sup> Govern<sup>r</sup> & Edward Tyng Esq<sup>r</sup> Assist and acknowledged a judgment against himselfe & Estate unto William Hobby of Boston for One hundred & Nineteen pounds ten Shillings & five pence to bee paide in Merchantable Fish refuse Fish & Oyl at price currant at Capebonne Waggon at the Eastward being according to bill Dat. Aug<sup>o</sup> 24: 1674 @.

This done as Attests Js<sup>a</sup> Addington Cler

Execucion issued Aug<sup>o</sup> 26: 1674. [269]

HEBERT & SAVAGES Testim<sup>o</sup>

David Hebert aged. 36. yeares or thereabouts & Thomas Savage aged. 34. yeares or thereabouts Sworn Saith that being desired by m<sup>r</sup> Benj<sup>n</sup> Gibbs to goe along with him to m<sup>r</sup> Hodges; which wee accordingly did & did there heare the s<sup>d</sup> Gibbs demand of s<sup>d</sup> Hodges paiment of that which hee promised in Court to pay to s<sup>d</sup> Gibbs; which was recovered against Ashton but s<sup>d</sup> Hodges replied, that hee would not pay any thing unless s<sup>d</sup> Gibbs would give him under his

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<sup>1</sup> Cape Newagen, Maine?

hand that hee should receive it again of m<sup>r</sup> Saffin, and farther say that s<sup>d</sup> Gibbs did tender s<sup>d</sup> Hodges to pay him or discount with him whatsoever s<sup>d</sup> Hodges could justly demand of him for Court charges or words to that purpose & farther say not this aboue was demanded this 12<sup>th</sup> day of Septemb<sup>r</sup> 1674.

This was Owned by m<sup>r</sup> Umphry Hodges to bee the truth before us the 12: 7<sup>br</sup> 1674.

John Leverett Gov<sup>r</sup>  
Edward Tyng Assist.

Entred 12: 7<sup>br</sup> 1674.  
per Js<sup>a</sup> Addington Cler.

#### TOWNSENDS discharge to m<sup>r</sup> ALLEN

Whereas o<sup>r</sup> Late Uncle Elder James Penn deceased did by his Last will & Testam<sup>t</sup> give & bequeath unto us Peter Townsend & James Townsend his Kinsmen, to each of us a legacy of Fifty pounds apeice in mony, to bee paide to us after the decease of o<sup>r</sup> Aunt Penn widow & Executrix of the last will and Testament of o<sup>r</sup> saide Uncle: Now Know all men by these presents that wee the saide Peter & James Townsend in consideration of the Summe of Forty pounds apeice in mony to us now in hand paide by m<sup>r</sup> James Allen Agent for our saide Aunt Penn, the receipt whereof wee doe hereby acknowledge doe for us o<sup>r</sup> heires Executo<sup>rs</sup> & administrato<sup>rs</sup> forever remise release & quitclaime unto o<sup>r</sup> s<sup>d</sup> Aunt m<sup>rs</sup> Katharin Penn her heires & Executo<sup>rs</sup> of & from the saide Legacy & Legacies & all other claimes & demands that wee or either of us might or should haue to the Estate of o<sup>r</sup> saide Uncle Penn or any part thereof by virtue of his Last will & Testament. Jn Witness whereof wee the saide Peter & James Townsend haue hereunto put o<sup>r</sup> hands this 30. of Septemb<sup>r</sup> 1674.

Peter Townsend  
James Townsend

Signed & Deliu<sup>rd</sup> in the pu<sup>r</sup>sence of us.  
John Wiswall sen<sup>r</sup>  
Penn Townsend  
Js<sup>a</sup> Addington  
30 7: 74



This Instrument abouewritten was acknowledged by Peter Townsend & James Townsend as their act & Deed Sep<sup>t</sup> 30: 1674. Before mee

Edward Tyng Assist.

Entred per Js<sup>a</sup> Addington Cler [ 270 ]

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16<sup>th</sup> 8<sup>br</sup> 1674

Present

Cap<sup>t</sup> DANIEL GOOKIN Esq<sup>r</sup> & EDWARD TYNG Esq<sup>r</sup> Assist<sup>s</sup>

BOWEN to BRADING

Thomas Bowen of Marblehead personally appeared and acknowledged a Judgment against himselfe & Estate unto James Brading of Boston for twelue pounds to bee paid in merchantable Fish or else in mony.

as Attests Js<sup>a</sup> Addington Cler

Execucion issued Novemb<sup>r</sup> 23 1674.

At A County Court held at Boston 27<sup>th</sup> of October: 1674 @

Present

JN<sup>o</sup> LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>  
SIMON BRADSTREET Esq<sup>r</sup>

EDWARD TYNG  
WILLIAM STOUGHTON } Esq<sup>rs</sup>  
Majo<sup>r</sup> THO: CLARKE }

Grandjury the same w<sup>th</sup> the former Court Ferdinando Thayer added.

Jury of Tryalls Sworn

Cap<sup>t</sup> Jn<sup>o</sup> Hull  
James Whetcomb  
Nathan Raynsford  
John Polley

John Baker  
Timothy Tylestone  
John Wales sen<sup>r</sup>  
Robert Parmentor

John Ripley  
Henry Wight  
Martin Phillips  
Tho: Drake

[ HOARE v. FOGG ]

William Hoare plaint. ags<sup>t</sup> Ezekiel Fogg Defendant in an action of the case for his false & fraudulent dealing with & excessive over reaching the saide Hoar in the sale of a parcell of painting Stuffe & brushes chargeing them at an intollerable rate (viz) four or five times more then the worth of them & hath by flattering & insinuating discourse inticed the s<sup>d</sup> Hoar being ignorant of the prizes of such things to give him a bill under his hand for the paiment of the saide mony & bread & after making Sale of part of the saide goods to his the saide Hoar's great damage & other due damages according to Attachm<sup>t</sup> Dat. October 14<sup>th</sup> 1674.

. . . The Jury . . . founde for the plaint. damage Seven pound fourteen shillings six pence & the delivery of the goods to W<sup>m</sup> Hoar according to Invoyce on pœnalty of ten pound ten shillings in mony to bee paide more then the Seven pounds fourteen Shillings six pence aboue expressed & costs of Court allowed by the Magistrates

MOSELY ags<sup>t</sup> HOBART

Richard Mosely, late Owner of one quarter part of the Ship golden Faukon plaint. ags<sup>t</sup> Josiah Hobart late Master of the saide Ship defend<sup>t</sup> in an action of the case for that the s<sup>d</sup> Hobart doth neglect & refuse to give unto the s<sup>d</sup> Mosely a just & true Accompt with the produce thereof for one quarter part of the profits or Earnings of s<sup>d</sup> Ship made in a voyage or voyages from Barbados to New-England & from New-England to Barbados again since about January last

was [ 271 ] twelve months, as hee the s<sup>d</sup> Hobart was master of the s<sup>d</sup> Ship & the saide Mosely a quarter part Owner as aforesaide; the nonperformance of which by the saide Hobart is to the plaintiffs damage to the Summe of one hundred pound with other due damages according to Attachm<sup>t</sup> Dat: Septembr 3<sup>d</sup> 1674. . . . The Jury . . . founde for the plaintife; viz: that Josiah Hobert render an Acco<sup>t</sup> to the s<sup>d</sup> plaintife once within twelve months or if s<sup>d</sup> Hobart shall arrive in New-England sooner then within forty dayes after his saide arrivall on the pœnalty of Fifty pounds, by an Acco<sup>t</sup> the Jury intends a true account & costs of Court allowed by the Court three & twenty shillings & ten pence.

WINSLOW ags<sup>t</sup> SHAKERLY &<sup>a</sup>

Richard Middlecut or John Williams Attournies to Samuell Winslow plaint. ags<sup>t</sup> John Shackerly or Peter Jacobson Marius them or either of them Defendants, in an action of the case for withholding a debt of Forty eight pounds three Shillings & three pence Starling; which was to bee paide the one halfe in bread at Eleven shillings & six pence per hundred & the other halfe in Flower at ten Shillings six pence per hundred all which was to haue been delivered the saide Winslow at the Weigh house in new Orania or yorke<sup>1</sup> upon the fourteenth day of August last past as will appeare by a bill under their hands dated the eighth day of July 1674. wherein the saide John Shakerly and Peter Jacobson Marius are bound jointly & severally for the paiment of the abouesaide Summe in the species abouemention<sup>d</sup> to the saide Winslow & due interest & all other due damages according to Attachm<sup>t</sup> Dat. August 29<sup>o</sup> 1674@ . . . The Jury . . . founde for the plaint. viz: the bill Forty eight pounds three Shillings three pence & damage for non paiment at time & place twenty five pound one shilling & costs of Court allowed by the Court. Nineteen Shillings. Robert Orchard as Surety for the Defendant appealed from this Judgment unto the next Court of Assistants & the s<sup>d</sup> Robert Orchard as principall in £:74 & Arthur Mason & Tho: Bingley as Sureties in £:37 apeice acknowledged themselves respectiue bound to . . . prosecute his Appeale . . .

[ See Records of the Court of Assistants, i. 29.]

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<sup>1</sup> New Orange (Albany), or New York.

BALL ag<sup>t</sup> RIGBEE

Francis Ball plaint. ag<sup>t</sup> Samuel Rigbee Defendant in an action of debt to the value of thirty & seven pounds & [ 272 ] fifteen Shillings to have been paide Long since in green hides & mony & goods to the saide Balls content & is all yet unpaide to the saide Balls great damage these with all other due damages according to Attachm<sup>t</sup> Dat. the 20<sup>th</sup> m<sup>o</sup> 8: 1674. . . . The Jury . . . founde for the plaint. viz. debt thirty five pounds to bee paide in mony & green hides & costs of Court allow<sup>d</sup> by the Court thirty one Shillings & eight pence.

LYTHERLAND ags<sup>t</sup> BROWN

William Lytherland plaint. ag<sup>t</sup> William Brown of Salem senior Defend<sup>t</sup> in an action of the case for irregular or illegall executing upon & imprisoning and retaining in prison the saide Lytherland whereby hee is deprived of a Subsistence of himselfe & sick family and detainment from all publike Ordinances to the damage of the saide Lytherland about Fifty pounds in mony & all other due damages according to Attachm<sup>t</sup> Dat. Septembr 2<sup>d</sup> 1674. . . . The Jury . . . founde for the plaint. damage twenty pounds & costs of Court allowed by the Court thirty one shilling & two pence. The Defend<sup>t</sup> appealed from this Judgm<sup>t</sup> to the next Court of Assistants and the saide m<sup>r</sup> William Brown principall in £:40: & Cap<sup>t</sup> Edward Hutchinson & m<sup>r</sup> John Pool Sureties in £:20 apeice acknowledged themselves respectiuey bound to . . . prosecute his appeale . . .

[In consequence of a judgment and execution granted at Salem Court, 24 June, 1673, the Marshal made the following return, dated 29 August, 1673 (S. F. 1351.2):

J Levied this Execution upon the body of William Leatherland after demand of Specie at his house & of him & hee refused to pay or to tender any in kinde soe J committed him into the prison at Boston to bee safe kept by Thomas Matson keeper of this house of the prison till this Execution bee fully Satisfied . . . J by the same m<sup>r</sup> Brownes order told this Leatherland that five pounds of it was paide already & J demanded noe more but the remainder then.

After obtaining liberty from the Court of Assistants "to goe to the Ordinances of christ in Boston as also to vissit his sick wife w<sup>th</sup> his keeper" (Records, i. 21), Lytherland tried this appeal to his creditor (S. F. 1351.6):



M<sup>r</sup> W<sup>m</sup> Browne  
& much Respected

Boston Prison. 14<sup>th</sup> 7<sup>mo</sup> 1674

Loving respects presented to you S<sup>r</sup> J beseech yo<sup>r</sup> favo<sup>r</sup> in the perusall of these few lines unto you from yo<sup>r</sup> afflicted mizmazed prisoner who beares noe ill will unto you, nor never had any desire to deprive or or evade, whereby you might bee deprived of yo<sup>r</sup> true right; which J cannot attaine without a legall way of proceeding against mee as J stand bound with Cap<sup>t</sup> Hudson jointly and severally, J beseech you therefore considering my case, you know the debt is not mine, & that J haue a bond to keepe mee indemnified &c yo<sup>r</sup> selfe also being convinced as you enformed mee at Salem & that by advice you were enformed that J must suffer before J could act for redress. Jf soe J pray you consider into what a labarynth you haue brought mee, J told you before you kept mee on the tainters by omission endangering mee & my posterity, & now where am J! Jn prison deprived of publick Ordinances, from way of Subsistance for my sick wife & selfe, her saide deprivall of helpe lying (as Supposed) on her deathbed will lye at some body's dore, as also my rotting in prison (as some Say J shall) but what am J imprisoned for, for a Judgement against mee who never dealt with you for or about one penniworth of anything as singly related, & as the Execution expresseth; what can J doe less then J haue done, J haue noe way of reveiw, for there was never Judgement soe granted to reveiw from, no[r] can J sue the bonds neither upon Cap<sup>t</sup> Hudson nor his Successors hee not being named in the Execution, it's some other matter S<sup>r</sup> however it shall appeare upon tryall before godly Magistrates & honest & able Juro<sup>rs</sup> let not yo<sup>r</sup> Spirit principa[l] & genius J hope is otherwise soe rise against mee as to bee instrumentall of the deprivation of my Soules liberty, for to mee the vision failes, nor altogether deprive my sick wife that J may neither visit her to some help or seeking out, Shee is innocent if my body doe rot in prison (as word brought mee spoken by yo<sup>rs</sup> improved) the grave will free from all. Job: 3: 19. But good S<sup>r</sup> favour mee soe much (it's in yo<sup>r</sup> power) to grant mee freedom of publick Ordinances & if it might bee sometime with the keeper to visit my Sick wife, & in case of her decease to see her buryed & secure what is left, Jt would bee to my great prejudice to make an escape, J haue yet through mercy Estate enough that my person should not bee in prisoned.

Yo<sup>r</sup> favo<sup>r</sup> in my request will oblige him, who never bore you ill will nor willing to wrong you but remaine as aboue saide, yo<sup>r</sup> as dejected soe rejected Freind & prisoner

W<sup>m</sup> Lytherland

Truly Coppied . . . Js<sup>a</sup> Addington Cler

This appeal proving unavailing, he drew up the following bill of complaint (S. F. 1351.4) upon which the action was based. His references to the Law Book are to the Generall Laws and Liberties (1672), and are generally accurate:

The Declaration & complaint of Will: Lytherland plaintife against Will: Browne Senio<sup>r</sup> Defend<sup>t</sup> in an action of the case for irregular or illegal Executing upon imprisoning & retaining in prison the saide Lytherland to his damage about Fifty pounds in money &c. first: That the saide m<sup>r</sup> Brown hath executed upon &c upon the s<sup>d</sup> Lytherland for not Satisfaction of a Judgement granted to the s<sup>d</sup> B [torn] held the 24. 4<sup>mo</sup> 1673. against the s<sup>d</sup> Lytherland without the Nomina-

tion of any other person in his Execution whereas the s<sup>d</sup> Lytherland never as relating to himselfe had to deale with him to the value of one penny, nor never any Attachment against him singly, Attachment being the ground[s] of Judgement then Lytherland humbly conceives that there can bee noe Judgement soe stated for if not how can an Execution not soe & soe taken out & executed the Attachment Voide in Law, as Law booke p: 144. title Sureties & goods Attach't as in the proviso & soe against our fundamentall law see in the first Law, the Attachment & Execution differing as [torn] two causes & yet Lytherland restrained.

2. That contrary to Law hee keeps the s<sup>d</sup> Lytherland in prison for debt as hee saith, when the law saith p. the. 6. title arrests hee shall not bee kept in prison but when there is an appearance of some Estate that hee will not produce; now that it is not soe with lytherland appeares by the Marshalls Return &c who saith hee demanded it at his house but not of him, at his house according to the law title Marshalls p. 103. 104. Sect. 7. which if it had been soe there had been enough to have Satisfied his pretended debt [torn] part with his right there for. 250<sup>l</sup> [torn] [w]ould have Satisfied both debt & damage according to Law of payments. p: 120: 121. if hee would haue house & Land [torn] but amount [torn] his Satisfaction but if hee say it must bee in the same specie m<sup>r</sup> Browne hath tooke sufficient occasion to prevent for Lytherland soe imprisoned without mercy as from himselfe can neither injoy the Ordinances of Christ nor visit his sick wife though humbly solicited nor Liberty to shew Estate & make Agreement to pay in the same Specie pretended being bound up from all convayances &c as. p. 32: Sect. 3.

[3]ly. The Judgement being granted (as he saith) at Salem. 24. 4<sup>mo</sup> 1673. and the Execution taken out the. 26. 6<sup>mo</sup> 1674 which is aboue. 14. months contrary the Law title Sureties & goods attached. p. 144. which saith where Execution is not taken out & executed within one month after Judgement is granted, all such attachments whether on persons or Estates with Sureties shalbee released & voide in Law, which Law being explained added to in the Law made May 1672. p. 2. still refers to bee to one month to Sureties & principalls [torn] that that's the intent of the Law, true the former law p. 144. hath provisos in it in answer to which [torn] [Lytherland is] noe stranger for hee hath been here about. 44. yeares & a Freeman of this Jurisdiction about. 40. yeares: But: 2<sup>ly</sup> the Law sa[ith] the Court may give further time & respit Execution in any perticuler case; which if it had been done Lytherland should haue freely Submitted, as owneing our good Laws to bee our Stability and tranquility, but that there is noe such thing appeares by the testimony of the Clarke

4<sup>ly</sup> Jf m<sup>r</sup> Browne should pretend that hee intends a Judgement in that case commenced against William Hudson & Will: Lytherland as the Attachment expresseth & soe the Judgement also m<sup>r</sup> Browne well knew that Lytherland was onely a Surety as appeares both by blaming m<sup>r</sup> John Hubbard that hee would trust Cap<sup>t</sup> Hudson, also m<sup>r</sup> Browne saw & read the Counterbond wherein it is owned to bee the Captain's debt and to keepe Lytherland indemnified &c m<sup>r</sup> Browne being convinced as by his acknowledgement that there must bee a legall course taken whereby himselfe & Lytherland might [torn] repaires from Cap<sup>t</sup> Hudson who both did and doth affirme gr[eat] part or all to bee paid, one affirming the other denying [how] ever certain it is that m<sup>r</sup> Browne hath received of Cap<sup>t</sup> [torn] 5<sup>li</sup> by m<sup>r</sup> John Hubbard his Agent & [40]<sup>s</sup> m<sup>r</sup> [Joshua] Hew [torn] paid himselfe on that accompt, [torn] will appeare by the Witnesses, and the

Mars[torn] ordered to tell this lytherland that five pounds is paide a[s in] his return specified with Abrand this lytherland, o the wof[ul] Enmity & unmercifullness of such a Spirit that is not Satisf[ed] with his flesh imprisoning &c but Starve his Soul what in [him] lyes though importunely sought unto both by Letter & by Robert Sanford & hee would not, but as hee hath cast him into prison soe still retaines him till hee should pay the debt, the debt not being his nor any part as it is now Stated For

First hee saith the Execution must bee Executed upon lytherland onely & that such a Judgement was granted to him at a County Court held at Salem. 24. 4<sup>mo</sup> 1673. which is most untrue for the Judgement at that Court is against William Hudson & William Lytherland Defendants as appeares by the Judgem<sup>t</sup> it selfe, now that hee shall execute upon lytherland alone without soe much as mentioning William Hudson at all which is principall, soe that contrary to law hee hath deprived of a reveiw, though there is just cause Seven pounds being paide [torn] & yet Judgement for the whole See title tryalls. p. 152. Sec. 1. & contrary to the Law title Marshalls p: 102: 103. where Execution can bee for noe more then for the remainder & thereby enlargething the Marshalls fees for Serving the Execucion p. 102. Sec. 4

2<sup>ly</sup> For m<sup>r</sup> Browne to Execute upon imprison &c the s<sup>d</sup> lytherland alone without Nominating Will: Hudson who is principall & with whome m<sup>r</sup> Browne hath since Judgment agreed with Cap<sup>t</sup> Hudson to referr all their differences to men to end, this case of the brandy being one, that if m<sup>r</sup> Browne were in the Cap<sup>ts</sup> debt, then the pay for the brandy [to bee] taken off or soe much abated, the men were agreed [torn] as the Witnesses will affirme, soe that lytherland did & [doth] conceive that a colaterall agreement doth free him and yet m<sup>r</sup> Browne by this illegall course hath not onely deprived lytherland of the benefit of the Law which gives liberty for the Surety to Surrender the principall person into the hands of the Marshall or his Deputy. p: 144. — but

[3] <sup>ly</sup> Jf m<sup>r</sup> Browne can after. 14. monthes that the Judgement is granted contrary to the Law before alleaged take out and [torn] ly & not Nominating the other, the like may hee doe after. 14. yeares, in which time Lytherland may bee dead & soe executed upon his posterity & then after that by the same rule take another against William Hudson & soe bee twice paide & again after that according to Attachm<sup>t</sup> and Judgement take out Execution against both & Execute upon either of them or either of their posterity; which wilbee a laying up a sad inheritance for his posterity; but through mercy our Law hath otherwise provided, it to bee taken out & Executed in one month as aforesaide: And

[4] <sup>ly</sup> This act of m<sup>r</sup> Brownes deprives lytherland of prosecuting his Counterbond for in the Execution William Hudson is not named & then may hee justly Say that this is some matter relateing to Lytherland onely & not a word of mee William Hudson and soe thereby Lytherland or posterity ruined: all which occasioned the aforesaide Lytherland thus to ma[ke] his humble address to the Hon<sup>rd</sup> & godly bench & Jury [for] releife, having his dependance upon the Lord from [whome] comes every mans Judgement

Damages Sustained; his Sixty dayes imprisonment [torn] charges in Sending & for Coppies of Records from Salem besides the extraordinary charges of his sick wife and deprivation of oppertunity to procure wood & provitions &c for winter to his great damage as abouesaide

W<sup>m</sup> Lytherland

. . . true Coppie . . . Js<sup>a</sup> Addington Cler



Browne's Reasons of Appeal have not been preserved; Lytherland's Answer (S. F. 1351.8) raises no new points. The Court of Assistants reversed the judgment of the lower court (Records, i. 25) in spite of a moving petition (S. F. 1351.7) to them from Lytherland, recalling his friendship with Elder Leverett the Governor's father and other "Antient bretheren & sisters." There is no record of when Lytherland was released, but at the January session, 1674/75, he was suing the clerk of the Salem Court for complicity with his alleged persecutor.]

FOGG ag<sup>t</sup> HOAR

Ezekiel Fogg plaint. ag<sup>t</sup> William Hoar Defendant in an action of debt for withholding the Summe of Seventeen pounds ten Shillings paiaable ten pounds in mony & one thousand of Bread at Seven pounds ten Shillings as appeares by a note under his hand bearing date the 15<sup>th</sup> of Septemb<sup>r</sup> 1674 & other due damages according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 2<sup>d</sup> 1674. . . . The Jury . . . founde for the plaintiffe the bill viz. Seventeen pounds ten Shillings & costs of Court. [273]

LEGG ag<sup>t</sup> DAVIS

Sammuel Legg plaintife ag<sup>t</sup> the goods debts or Estate of Thomas Davis in the hands of Joseph Townsend Attourney to the s<sup>d</sup> Davis Defend<sup>t</sup> in an action of Reveiw of a judgment granted the s<sup>d</sup> Davis at a County Court held in July Last for Nine hundred & Fifty pounds of Sugar in caske here in New-England, which was for nonperformance of a bill of Lading for a horse to bee delivered in the Jsland of Barbados the danger of the Seas excepted; but by strease of winde and weather was forced to the Jsland of Mountserat & there sold the aforesaide horse for Sugar to bee delivered there as per accompt, the plaintife not having any provinder on board neither could get any ashoare whereby to carry the saide horse any farther; by virtue of which Judgment the plaint. is aboue ten pounds in mony damnified & all other due damages according to Attachm<sup>t</sup> Dat. August: 29<sup>th</sup> 1674. . . . The Jury . . . founde for the Defendant costs of Court, allowed by the Court five Shillings & eight pence: The plaint. appealed from this Judgment to the next Court of Assistants and the saide Sammuell Legg principall in £5. & Jonathan Balston sen<sup>r</sup> & Jn<sup>o</sup> Williams as Sureties in 50<sup>s</sup> apeice acknowledged themselves respectiue bound to . . . prosecute his Appeale . . .



This maritime and equine case had already once been before the Court. See Davis v. Legg, above, p. 468; the documents of both cases are in S. F. 1348. Captain Legg's explanation of why his ketch Endeavour failed to deliver Davis' horse is in S. F. 1348.4. It begins with the following bill of lading (S. F. 1348.8):

Shipped by the grace of God in good order & well conditioned by mee Thomas Davis and for my proper accomp<sup>t</sup> in & upon the good Catch called the Indeavo<sup>r</sup> of Boston in New England whereof is Master under god for the present Voyage Samuel Legg and now rideing at anchor in the harbour of Boston and by Gods grace bound for the Jsland of Barbados, to Say one Iron gray horse with a bald face and a kinde of an L C on his Left buttock the .L. not very plaine but discernable two slitts on the top of the Left Eare & a notch on the right Eare behinde; with three tite hhd's being marked & numbred as in the Margent, and are to bee delivered in the like good order & well conditioned at the aforesaide port of Barbados (the danger of the Seas onely except<sup>d</sup>) unto Cap<sup>t</sup> John Merrick or to his assignes hee or they paying Freight for the saide horse at Nine hundred pounds of Muscovado Sugar whether the horse Live or dye with primage & avarage accustomed. In Witness whereof the Master or purser of the saide Ship hath affirmed to three bills of Lading all of this tenour and date, the one of which three bills being accomplished the other two to stand voide & soe God send the good Ship to her desired port in safety Amen

Dated in Boston the 26<sup>th</sup> of June. 1671.

The Caske & horse received, Staving Excepted in the Water caske

per Samuel Legg

Own<sup>d</sup> in Court by Sam<sup>ll</sup> Legg. July. 30<sup>th</sup> 1674.

as Attests Js<sup>a</sup> Addington Cler.

Newyorke June. 3<sup>d</sup> 1673.

J underwritten assigne & make over all my right title & interest of the within mentioned bill of Loading unto my trusty & welbeloved Freind m<sup>r</sup> Joseph Townsend of Boston as Witness my hand the day & yeare abouewritten

Thomas Davis

Witness. Jonathan Woodberry

J Joseph Townsend doe hereby assigne or reassigne all my right & interest of the within mentioned bill of Ladeing unto the abouesaide Thomas Davis as Witness my hand this. 25<sup>th</sup> of July. 1674.

Joseph Townsend

Captain Legg explains in the following document (S. F. 1348.4) why the bald-faced gray found a home in Montserrat instead of Barbados:

To the Honored Court & Jury Sam<sup>ll</sup> Leggs Declaration

J doe Owne the bill of lading that is now against mee & would a performed it had not the Danger of the Seas prevented by reason the windes did hang very much Easterly in the Voyage and blowed soe hard that J could not keepe to Windward but forced to bare up, much to save the horses, whereof this in controversy was one of the Weakest, and when J came to the latt<sup>d</sup> of. 22<sup>d</sup> or thereabouts the Winde blowed soe hard that J was forced to goe two or three points

from my course being very bad Weather, the Sixth day of August. 1671. J was much afraide of the Shoales of Brubuda & kept all hands on the deck all night or the most part of my men, being very desirous of day, and in the Morning J Look't about the dawning of the day or a little after & see the Land; which was the Jsland of Grantar, about 2. leagues from the Shoare & had then been at Sea five weekes & something more, my horses very weake & their meate in a manner all done, the winde blowing very hard, J presently advised with my men & passengers & one & all saide let's goe to any Jsland for there's noe hopes to get to Windward with these horses, they being placed between decks, & then with a full consent wee bore up the helme & that day abouesaide wee came to an ankor in Mounseratt Rhode about Sun Set it rained & blowed very hard soe that J was much afraide of a Hurrycane & soe weare the people onshoare, J asked the best advice concerning my horses the landing of them, & it was the Judgement of every one that it was a Madness to keepe them onboard such Weather, J did land them & fitting the vessell & did intend to put to Sea; but it pleased god the Weather broke up & in four dayes J directed my Course for Barbadoes my port bound for & was three weekes going thither. — J Subscribe my Selfe yo<sup>r</sup> Hono<sup>rs</sup> humble Servant

Sam<sup>ll</sup> Legg

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

Two passengers on the Endeavour further deposed (S. F. 1348.9, 10) that there was no alternative to selling the horses at Montserrat since no dry fodder could be procured there.

Captain Legg's Reasons of Appeal (S. F. 1348.6) add nothing to his declaration. The appeal was duly heard by the Court of Assistants (Records, i. 27), which confirmed the former judgment with costs.

The following document is filed with others of this case (S. F. 1348.5), but has nothing to do with it, being an early instance of unpleasantness between colonial skippers and the Royal Navy. The frigate in question was the Rose, which brought Edward Randolph to look over the situation.

To the Hon<sup>rd</sup> the Goven<sup>r</sup> with the rest of the Hon<sup>rd</sup> Magistrates now Assembled in Generall Court at Boston this. 18<sup>th</sup> of Septemb<sup>r</sup> 1673.

The Remonstrance of Sammuell Legg Master of the Catch Endeavo<sup>r</sup> of this place.

Humbly Sheweth.

That yesterday comming out of the Sea with s<sup>d</sup> Catch standing up this Harbour in Company of another Catch whereof James Elson was Master, hee being a head of us, before wee came up with the Kings Friggott, about a mile, they fired a shott at m<sup>r</sup> Elson from onboard the Friggott, whereupon J strooke my topsail, notwithstanding which, they fired at mee also, then J halled my topsail close down, & halled up part of my Mainsail & came under the Friggots stern, then they told mee J must not pass untill farther Order, but brought mee by the lee, & came onboard with their Boate & tooke away my ancient & jack for the shott; severall provoakeing words passed betwixt the Gunner & my Mate, insoemuch that after they were all in the Boate, they came into the Catch againe with drawn swords & tooke my Mate away; J went afterwards onboard the Friggot

& paid 6<sup>s</sup> & 8<sup>d</sup> for the Shot & redeemed my Colours; telling the Gunner hee might cleere my Mate also, hee replied if J did not hold my tongue hee would press mee, & soe did, & kept mee & my Mate prisoners onboard, & the Friggots men went onboard of my Catch & brought her to an anchor, & fell to drincking there, soe that when J came onboard the Catch againe J founde my men & severall of them very much in drinck.

Sam<sup>ll</sup> Legg ]

MIDDLECOT ags<sup>t</sup> CARTER

Richard Middlecot the Order or Attourney of George DeWit plaint. ags<sup>t</sup> Ralph Carter Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Octobr<sup>r</sup> 13<sup>th</sup> 1674. The plaint. withdrew his Accion.

HOLMAN ag<sup>t</sup> BRIGGS

Samuel Holman plaint. ags<sup>t</sup> Abraham Briggs Defend<sup>t</sup> in an action of debt for not paying of thirty six pounds & ten shillings in currant mony due by bill & all other due damages according to Attachm<sup>t</sup> Dat. Octobr<sup>r</sup> 22<sup>d</sup> 1674. . . . the Jury . . . founde for the plaint. viz: the bill thirty six pounds ten Shillings & costs of Court allow<sup>d</sup> by the Court twenty five shillings.

Execucion issued 3.9<sup>br</sup> 1674. [274]

SPOWELL ag<sup>t</sup> GRIFFIN

William Spowell plaint. ags<sup>t</sup> John Griffin Defendant according to Attachm<sup>t</sup> Dat: October 22<sup>th</sup> 1674. The plaint. was nonsuited in failure of process & costs granted the Defendant five Shillings & Ten pence.

Execucion issued: Janur<sup>o</sup>: 23. 1674.

TOWER ag<sup>t</sup> HOBART &<sup>a</sup>

John Tower sen<sup>r</sup> plaint. against Cap<sup>t</sup> Joshua Hobart, Daniel Cushing Deacon John Levit & Matthew Cushing or the major part of them, Representatives for the Town of Hingham or Selectmen for the saide Town Defendants in an action of the case for refusing to give him & lay him out his proportion of land in the bounds of Hingham according to his proportion of house lotts, being in the possession of two house lotts & hath a right of commonage for two more, having a legall right to the divisions of four house Lotts & Land, being divided by house Lotts & ought soe to bee according to the

purchase from the Indians as appeares by theire Indian Deed; which hee hath a Legall right unto, being one of the first inhabitants of the saide Town of Hingham and also a purchaser of the severall house Lotts as abouesaide as will appeare by his Deeds & graunts from the Town of the same; yet they refuse to lay him out his proportion of the severall shares of Land æquall to other men according to theire house Lotts, being about two hundred pounds damages & all other due damages according to Attachm<sup>t</sup> Dat: 19: of October. 1674. . . . The Jury . . . founde for the Defend<sup>ts</sup> costs of Court allowed by the Court thirty eight Shillings.

Execucion issued X<sup>br</sup> 9<sup>o</sup> 1674.

#### BRIGGS ag<sup>t</sup> FOGG

Abraham Briggs plaint. against Ezekiel Fogg Defendant in an action of the case for withholding a debt of ten pounds nineteen shillings & three pence in mony due by bond and due interest & all other due damages according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> the 7<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. the bond & costs of Court. At the request of the plaint. upon hearing of both partys The magistrates chancered the bond to Eleven pounds five shillings in mony & costs of Court twenty Shillings & four pence

#### RAWSON ag<sup>t</sup> GLOVER &<sup>a</sup>

William Rawson (who married Anne the onely daughter of Nathaniel Glover deceased) plaint. against Habakkuk Glover of Boston & John Gurnell of Dorchester (who was guardians to the Children of the saide Nathaniel Glover Late of Dorchester deceased) Defendants in an action of Reveiw of an action of the case commenced & prosecuted at the Last County Court held in Boston in July last [275] for refusing to give a true just & perticuler account of his or theire managment of the Estate of the s<sup>d</sup> Nathaniel Glover deceased & rendring or delivering unto the saide William Rawson his portion or one fourth part due to him in right of his wife in mony goods & Rents in theire or either of theire hands for severall yeares past since theire betrustment, by virtue of which action Judgment was granted for the plaintiffe Six pounds two Shillings & five pence & costs; which is very much short of what is the plaintiff's due by aboue twenty



pounds with other due damages according to Attachment Dat: 22<sup>th</sup> of October 1674. . . . The Jury . . . founde for the plaintife thirty seven Shillings damage & costs of Court allowed by the Court Forty eight shillings & eight pence: The plaintife appealed from this Judgment to the next Court of Assistants & the s<sup>d</sup> William Rawson principall in five pounds & Jn<sup>o</sup> Dafforn & Jn<sup>o</sup> Noyse Sureties in fifty shillings apiece acknowledged themselves respectuely bound to . . . prosecute his appeale . . .

[ This is the review of a case based on the Glover will (above, p. 428) which was first tried at the July session this same year (above, p. 472).

The following document (S. F. 26692) is endorsed "Glouers defence."

Whereas the plaintiffe sueth for a division of the reversions of lands, J answer, The Debts and Legacies, which by the will are to be paid before any division be made, do amount to as much as the vallue of the whole farme, therefore, we do not see how there should be any thing remaining in the farme to be divided, for there is by the will 400<sup>l</sup> to be paid to m<sup>r</sup> Thomas Glouer, also there is a debt of 200<sup>l</sup> pound, to be paid in England, to m<sup>r</sup> William Glover, due by bill and other accounts, also Two hundred pound apiece to be, to be paid, to John and Pelatiah Glover out of the farme, after their mothers death besides One hundred pound, pound a piece, which was to be paid before her death, which they have not as yet receiued, Soe that there is due to John and Pelatiah Glover each of them Three hundred pound apiece, that is Six hundred pound, to them two, which with the legacies to m<sup>r</sup> Thomas Glover and m<sup>r</sup> William Glover, is Twelve hundred pounds, which is more then the vallue of the farme, therefore we do not See how there Can be any thing remayning for a division.

Againe the plaintiffe together with his brethren haue already in possession some of the best of the medow of the farme, and Some of them have Sold and disposed of what they possessed, againe m<sup>rs</sup> Glover being desirous that John and Pelatiah Glover should have the farme, gave to her Son Nathanael a Considerable part of the moovable estate, whereof there is 138 which we Can bringe prooffe of. M<sup>rs</sup> Glover also thincking that she might Sattisfy Nathanael and his Children, so well that they would not looke for any intrest in the farme, she gave them lands at Dorchester, more then halfe as much as all the Corne land or pasture land on the farme, which they have in possession, and some of them have Sold that which they possessed, therefore doubtlesse, the plaintiffe with his brethren haue receiued more then is equivalent to any intrest which they Can Justly Claime in the farme, and doubtlesse they will not disowne their possession of those lands mentioned, wh[ic]h do appeare to be 138 acres under the hand of Deacon Capen Record[er.] Againe, as for John and Pelatiah Glover, they haue not yet receiue[d] any more then four yeares rent of the farme, it is but Six yeares Since m<sup>rs</sup> Glover dyed, and building and reparation, tooke up two yeares rent, which Cannot pay any more then the Jntrest of the Debts and legacies.

Rawson's Reasons of Appeal are not preserved, but their nature is sufficiently indicated in Glover's answer to them (S. F. 1459.4):

Jn Answ<sup>r</sup> to m<sup>r</sup> W<sup>m</sup> Rawsons Reasons of appeale (as he calleth them)

1 To y<sup>e</sup> first Reason, whereas the Plaintiff saith in his first Reason that if they or any two of them haue power to Lease, then much more to deuide to y<sup>e</sup> heyres J answer John & Pelatja Glover doe not dispose, of any Land to make any deuision thereof but only to Lease it, w<sup>ch</sup> any man may haue power to doe, who hath not power to deuide, amongst others, therefore it doth not follow y<sup>t</sup> because one who is sued (not in the right Capacitie) & yet hath power to Administer on the estate, & doth Lease the Land y<sup>t</sup> therefore he hath power to deuide the Land, though the will doth forbid deuision till legacies be payd, yet it doth not forbid Leasing for then there could be no rent wherewith to pay either debts or legacies

2 To his 2<sup>d</sup> Reason J answer, what need is there of more prooffe for the legacies then the will, (as for the debts, when m<sup>r</sup> Habbacuck Glouer commeth, wch will shortly be he will make them appeare. Jn the meane while J am only a witness to the debts (& no heyre to the estate therefore not liable to be Sued) also whereas there is a Bill of m<sup>r</sup> John Glovers wch doth declare the sume, wch was forgott to be put into the Court w<sup>ch</sup> is ready to appeare when required by Authoritie, As for y<sup>e</sup> legacies y<sup>e</sup> will doth mention 400<sup>l</sup> to m<sup>r</sup> Thomas Glover, & also 400<sup>l</sup> to John & Pelatja Glover, after their mothers decease, besides 200<sup>l</sup> w<sup>ch</sup> John & Pelatja should haue receiued before their mothers decease, these w<sup>th</sup> the Debt of 200<sup>l</sup> due to m<sup>r</sup> Willjam Glover, with the Interest of all these amounteth to more then the Rent of the Farnes. And whereas he saith that the estate was three tymes as much as all y<sup>e</sup> debts & Legacies J answer yet that estate did not pay any legacies nor all the debts, neither had John or Pelatja any thing of it, but it appeareth by y<sup>t</sup> account w<sup>ch</sup> Roger Billinge gave into the Court, that m<sup>r</sup> Nathaniell Glover & his children haue had that Estate or a great part of it, besides the horses wch m<sup>r</sup> W<sup>m</sup> Rawson sued m<sup>r</sup> Habbacucke Glover for, w<sup>ch</sup> was part of m<sup>rs</sup> Anne Glovers Estate: & besjds what was given to make y<sup>e</sup> land worth 400<sup>l</sup>

3 To his 3<sup>d</sup> Reason whereas he is pleased to say that John Glover with hime selfe as Appellant moved the Countie Court for a diuision (that is not so) also whereas the Appellant saith the Court declare that y<sup>e</sup> Appellant must sue at Common Law for a diuision, J know nothing of that neither, but if the Countie Court did so direct, that is nothing to y<sup>e</sup> now defendant, he being only a legatie & no heyre

4 To his 4<sup>th</sup> Reason of appeale he Saith he that Sueth keepeth y<sup>e</sup> estate to his owne wronge & doth not pay the pretended Debts, J answer there hath not been time enough to pay all, for since our mothers decease there was two yeares rent layd out vpon necessarje Repaireations & building as appeares by Roger Billinge testimony [to &] this is but the Sixth year, wch is not to be reckoned, because the rent thereof is not due till the yeare be out Also whereas the present troublesome plantiue, makes a great wonderment as he saith, joyneing therewith his afflicted Condition, pretending he is kept out of an vndoubted right Saying y<sup>t</sup> y<sup>e</sup> defendant hath only a pretence of Debts to be payd w<sup>ch</sup> is a mistake in y<sup>e</sup> Plaintiff to call them p<sup>t</sup>ended Debts, when they are real Debts, so not at all doubting, but this Hono<sup>rd</sup> Court will see Just Cause to Confirme the Just Judgement of the Last Countie Court, & y<sup>e</sup> Gent<sup>m</sup> of the Jurie the Same, so submitting my selfe to yo<sup>r</sup> hono<sup>rs</sup>

J am yo<sup>r</sup> humble servant

John Glouer

When the action of appeal was called, "both parties Appeared & they both declaring they were Agreed the plantiffe wth the Courts Consent withdrew his Accion" (Records of Court of Assistants, i. 26).]

DAFFORN ag<sup>t</sup> LISLY

John Dafforn Facto<sup>r</sup> or Agent to m<sup>r</sup> John Johnson of Thenerife plaint. against Robert Lisy Defendant in an action of the case for the non performance or breach of bill of Lading under the s<sup>d</sup> Lisy's hand bearing date the 10. Feb<sup>r</sup> 1673. as may appeare by s<sup>d</sup> bill of Lading & Jnvoyce & otherwise to the plaintifes damage in behalfe of his principall as aforesaide the Summe of thirty pounds in mony or thereabouts with interest & other due damages according to Attachm<sup>t</sup> Dat: 22: Octob<sup>r</sup> 1674. . . . The Jury . . . founde for the Defendant costs of Court allowed by the Court Seventeen Shillings & ten pence.

Execucion issued 2: Nov<sup>r</sup> 1674.

DAFFORN ags<sup>t</sup> LISLY

John Dafforn plaint. against Robert Lisy Defendant according to Attachm<sup>t</sup> Dat. 22: October. 1674. The plaint. withdrew his Accion.

NANNEY ags<sup>t</sup> GARLAND &<sup>a</sup>

Katharin Nanney Executrix to the Estate of Robert Nanney deceased plaint. ag<sup>t</sup> Jn<sup>o</sup> Garland & Henry Robie &<sup>a</sup> according to Attachm<sup>t</sup> Dat. October: 13<sup>th</sup> 1674. The plaint. withdrew her Accion.  
[276]

DAFFORN ags<sup>t</sup> HOLOWALL & BUTLER

John Dafforn plaint. against William Holloway and Stephen Butler Defendants in an action of the case for or upon a trespass done by the s<sup>d</sup> Holloway & Butler by pulling down & removeing the s<sup>d</sup> Daffornes fence from of his land Lying before m<sup>r</sup> Rich<sup>d</sup> Wooddes house in Boston & laying his land waste; which s<sup>d</sup> Land was purchased or leased by the Town or Select men of Boston first to Cap<sup>t</sup> James Johnson & the saide Johnson convayed & made over all his right and interest of s<sup>d</sup> land unto Rich<sup>d</sup> Woodde & by the s<sup>d</sup> Woodde in like manner made over & convayed unto the s<sup>d</sup> Dafforne as will appeare by Deeds & Evidences reference thereto being had which trespass &



act as aforesaide is to the plaintife great damage in or to his title of s<sup>d</sup> Land & otherwise as shall appeare by prooffe, which hee refers to & other due damages according to Attachm<sup>t</sup> Dat: 22<sup>th</sup> Octob<sup>r</sup> 1674. . . . The Jury . . . founde for the plaint. ten shillings damage & costs of Court allow<sup>d</sup> by the Court thirty seven Shillings & two pence.

WHETCOMB ag<sup>t</sup> GIBBS

Josiah Whetcomb assigne of Joseph Waters plaint. ags<sup>t</sup> Benjamin Gibbs Defend<sup>t</sup> in an action of the case for detaining of a horse and a bridle & a saddle, whereby the plaintife is much damnified for want of the saide horse & other due damages according to Attachm<sup>t</sup> Dat: August: 24: 1674. . . . The Jury . . . founde for the plaint. damage six pounds in mony or that Benj<sup>a</sup> Gibbs return the s<sup>d</sup> horse with bridle & saddle as delivered within twenty four houres & costs of Court; allow<sup>d</sup> by the Court thirty eight shillings & sixpence.

[ For the beginning of this case, see above, p. 486 and p. 490, where the order of the court to the constable of Lancaster, that he should deliver Waters' horse to Gibbs, supposedly, but not explicitly, in satisfaction of the former's theft of a silver porringer from him, is recorded; also p. 493 where the judgment against Waters is recorded.

Unable to make the restitution required by this judgment, and apparently assuming that the transfer of the horse to Gibbs was invalidated by the sentence, Waters immediately made an assignment of his property in the animal to one Josiah Whetcomb (S. F. 1424.11), on condition that the latter pay his fine and the sum awarded by the Court to Gibbs. After fulfilling his part of the agreement (Gibbs' receipt for 5*l* 8*s* is in S. F. 1320.3), Whetcomb demanded the horse of Gibbs, who refused to surrender the animal; hence this action. Gibbs procured a review of the case in the April session, 1675: see below, pp. 587-92. ]

ATHERTON ags<sup>t</sup> LOCKWOOD

Cap<sup>t</sup> Jonathan Atherton plaint. against Cap<sup>t</sup> Richard Lockwood Defendant in an action of the case for withholding a debt of Fifty one shilling in mony due for a Mercator draft & a shilling in mony Lent him; which mony hee promised to pay him long since as will further appeare; with due interest & all other due damages according to Attachm<sup>t</sup> Dat. October 6<sup>th</sup> 1674. . . . The Jury . . . founde for the plaintife viz. that the s<sup>d</sup> Lockwood return to s<sup>d</sup> Atherton a



good Mercato<sup>rs</sup> draft or Fifty one Shillings in mony & costs of Court allowed by the Court twenty three Shillings & four pence.

Execucion issued 3. Novemb<sup>r</sup> 1674. [277]

CHAPPELL ags<sup>t</sup> MARSHALL

Nicholas Chappell plaint. against Cap<sup>t</sup> Thomas Marshall of Lynn Defend<sup>t</sup> in an action of the case for withholding the Summe of thirty four pounds in mony due for wines sold him as appeares by Booke & all due damages according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 20<sup>th</sup> 1674. . . . The Jury . . . founde for the Defendant costs of Court allowed by the Court nine Shillings.

PARKMAN ag<sup>t</sup> TOWNSEND

Elias Parkman plaint. ags<sup>t</sup> Joseph Townsend Defendant in an action of debt of Eleven pounds Sterling mony of New-England due by a bill or bond under his hand as will further appeare by saide bill & due interest & all other due damages according to Attachm<sup>t</sup> Dat. October 19<sup>th</sup> 1674. . . . The Jury . . . founde for the plaintife viz: the bill to pay in mony Eleven pounds & costs of Court three & twenty shillings & two pence: The Defendant appealed to the next Court of Assistants & the s<sup>d</sup> Joseph Townsend principall in two & twenty pounds & Richard Knight & Jn<sup>o</sup> Keen as Sureties in Eleven pounds apeice acknowledged themselves respectuely bound to . . . prosecute his Appeale . . .

[A copy of the bond in question is in S. F. 1347.3. It is an obligation to pay 11*l*, current money of New England,

. . . upon a proviso that William Waterland of Barbados Merchant dus not pay or cause to bee paide unto the saide Parkemans Attourney Richard Nuball Merchant in Barbados the full & just Summe of Eleven hundred Ninety & two pounds of Muscovado Sugar or the value thereof in mony at or before the tenth day of November next ensuing being the remainder of a bill of three thousand One hundred and Fifty pounds of Muscovado Sugar due for Freight of a parcell of goods consigned unto James Fauntleroy Merchant in the saide Barbados that were Ship<sup>t</sup> onboard the Ship Jane & Sarah of Boston the saide Parkeman Commander. . . .

A copy of Parkeman's bill of costs, and a copy of writ, return, and bond for Townsend's appearance to answer to Parkeman's complaint, dated 19 Oct., 1674, are also in S. F. 1347.3.

S. F. 1347.2

The Resons of Apeale from y<sup>e</sup> Judgment of y<sup>e</sup> honered County Court held y<sup>e</sup> 27<sup>th</sup> of 8ber 1674 att boston, in y<sup>e</sup> Case y<sup>t</sup> Elias parkeman was plaintiue & Joseph Townsend Defen<sup>t</sup> Vnto this honered Court of Assistance

Where as y<sup>e</sup> Apealant was sued vpon A bill w<sup>h</sup> was Conditionall in w<sup>h</sup> the princeple or Reall debt is but 1192 pounds of suger payable in barbados at 5 score to y<sup>e</sup> hundreded w<sup>h</sup> some of suger there; was at y<sup>e</sup> time due & now by Account Cvrant worth but a bout 10<sup>s</sup> per s<sup>d</sup> hundreded pond as is Comonly soe bought there & many Considerable quantatys haue bin soe bought here to bee paid for in this mony when advice is Receued here of y<sup>e</sup> payment of y<sup>e</sup> sug<sup>r</sup> in barbados after w<sup>h</sup> Rate y<sup>e</sup> sayd some of suger is worth at a Just & true value in new England mony but about 6: pounds; & yet y<sup>e</sup> Apealant is Condemned to pay for sd some of sug<sup>r</sup> Eleuen pounds in mony w<sup>h</sup> is nere duple y<sup>e</sup> Value of it soe y<sup>t</sup> y<sup>e</sup> Apealant doe humbly Conceue y<sup>e</sup> meritt & Equity of his Case was not Considered Efectually; for y<sup>t</sup> y<sup>e</sup> Apealant Can bee Justly indebted noe more then y<sup>e</sup> value of y<sup>e</sup> sug<sup>r</sup> as afore sd & interest there y<sup>t</sup> w<sup>h</sup> will not Amount to Eight pounds at y<sup>e</sup> highest Rate of debt & damages by interest or others: w<sup>h</sup> is all that Can Equally or Justly bee due or desiered as Conceued; y<sup>e</sup> Consideration here of is humbly presented vnto this honnered Court & gentlemen of y<sup>e</sup> Jurey for Reliefe to y<sup>e</sup> Apealant herein by yo<sup>r</sup> most humble servant, in behalfe of & as Attorney to sd Joseph Townsend

per me Christopher Clarke

dorothy townsend

These Reasons were received Feb<sup>ro</sup> 20<sup>th</sup> 1674.per Js<sup>a</sup> Addington Cler

The Court of Assistants (Records, i. 24) confirmed the former judgment.]

CALLEY ags<sup>t</sup> HASKET

Hanna Calley Attourny to her husband Joseph Calley plaint. ag<sup>t</sup> Stephen Hasket of Salem Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat: Octob<sup>r</sup> 8<sup>th</sup> 1674. The plaint. withdrew her Accion.

HUDSON ag<sup>t</sup> GEORGE

Cap<sup>t</sup> William Hudson plaint. ag<sup>t</sup> Richard George living at Cap<sup>t</sup> Hudsons Farme at wading River Defendant in an action of the case for breach of Covenant in non paiment of three yeares rent & upward & disorders in his house contrary to his saide Covenant to the damage of about One hundred pounds with interest & all other due damages according to Attachm<sup>t</sup> Dat: Septemb<sup>r</sup> 22<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. viz: three yeares rent & about  $\frac{1}{3}$  due according to Covenant which is One hundred Sixteen pound thirteen Shillings & four pence & costs of Court allowed by the Court Fifty eight shillings & eight pence.

Execucion issued Novemb<sup>r</sup> 2: 1674. [278]

HUDSON ag<sup>t</sup> BROWN

Cap<sup>t</sup> William Hudson plaint. ag<sup>t</sup> William Brown senio<sup>r</sup> of Salem Defendant according to Attachm<sup>t</sup> Dat. 19<sup>th</sup> of September 1674. The plaint. withdrew his Accion.

HUDSON ag<sup>t</sup> HUNT

Cap<sup>t</sup> William Hudson plaint. ag<sup>t</sup> John Hunt Defendant according to Attachm<sup>t</sup> Dat. October 21<sup>th</sup> 1674: The plaint. withdrew his Accion.

WRIGHT ag<sup>t</sup> HALL

Cap<sup>t</sup> William Wright of Boston plaint. ag<sup>t</sup> Ralph Hall of Exeter Defendant in an action of debt for seven thousand five hundred foote of Merchantable pine boards due by booke as with his hand thereunto set may appeare; which boards were to bee delivered in Aprill last at Boston & all due damages according to Attachm<sup>t</sup> Dat. Septemb<sup>r</sup> 29<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. seven thousand five hundred foote of Merchantable pine boards at Boston & costs of Court, allowed by the Court thirty Shillings.

SMITH ag<sup>t</sup> NEWMAN

John Smith (Attourney to George Smith of the Island of Tenerife Merchant in behalfe of the s<sup>d</sup> George Smith & Company) plaint. ag<sup>t</sup> Thomas Newman Late Master of the Ship Speedwell of Salem Defendant for withholding the Summe of six hundred pounds of Lawfull mony of New-England due for breach of Charterparty under his hand & Seal made between him saide Newman on the one party & Thomas Russell & John Dafforn in the behalfe & for the Acc<sup>o</sup> of the s<sup>d</sup> George Smith & Company on the other party bearing date the twentieth day of December Ann<sup>o</sup> 1673. the s<sup>d</sup> Newman not having delivered the goods Shipped per saide Russell & Dafforn for Acc<sup>o</sup> afores<sup>d</sup> according to bill of Loading under his hand Dated the s<sup>d</sup> 20<sup>th</sup> day of Decemb<sup>r</sup> 1673 & also the s<sup>d</sup> Newman having Loaden a considerable part of the s<sup>d</sup> Ship Speedwell during the s<sup>d</sup> voyage for his own or his freinds Acc<sup>o</sup> whereby the goods of the s<sup>d</sup> Smith & Company were not carried in s<sup>d</sup> Ship being to theire great damage; with other due damages according to Attachm<sup>t</sup> Dat. Octob<sup>r</sup> 16<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. the breach of the Charterparty

six hundred pounds & costs of Court allowed by the Court five pound three Shillings. The Defendant appealed from this Judgment to the next Court of Assistants & the s<sup>d</sup> Tho: Newman principall in twelve hundred pounds [279] & m<sup>r</sup> William Brown sen<sup>r</sup> & John Turnor as Sureties in six hundred pounds apeice acknowledged themselves respectiuely bound to . . . prosecute his Appeale. . . .

#### PAINE to BALSTON

Samuel Paine of S<sup>t</sup> Christophers personally appeared in Court 27.8<sup>br</sup> 1674 & acknowledged a Judgment against himselfe & Estate for Fifty pounds in mony unto Jonathan Balston sen<sup>r</sup> of Boston for the use of Ralph Willet of S<sup>t</sup> X<sup>top</sup>hers being for soe much due according to bill Dat. Feb<sup>r</sup> 3.7<sup>3</sup>/<sub>4</sub> with interest

#### Present

SIMON BRADSTREETE	} Esq <sup>rs</sup>	27:8 <sup>br</sup> 74.
Majo <sup>r</sup> THO: CLARKE		

#### WILLIAMS to WHARTON

Personally appeared John Williams of Boston Barber and acknowledged a judgment against himselfe & Estate for fifteen pounds Eighteen Shillings in mony unto m<sup>r</sup> Richard Wharton: Execucion by consent to bee respited for one month.

#### FISHERS Licence

Joshua Fisher is allowed to keepe a house of publique Entertainment in Dedham to Sell wine beere & Sider by retail till Aprill Court next and the s<sup>d</sup> Joshua Fisher principall in ten pounds & Elder John Wiswall & Cap<sup>t</sup> Daniel Fisher as Sureties in five pounds apeice were bound in Court for his observance of the Laws title Jnkeepers with their additions.

#### JACKLENS discharge

Edmund Jacklen of Boston is freely discharged from attending Ordinary Trainings in Cap<sup>t</sup> Savage his company without paying any thing yearely to the use of the Company.



## HENNINGWAYES bonds continued

Ralph Henningway & Joshua Hews sen<sup>r</sup> appeared in Court and declared that Ruth Henningway for whose appearance they were bound to this Court was not yet delivered & they desired the case might bee continued till the next Court of this County, they declaring they continued theire bonds till then.

Grandjury discharg<sup>d</sup>

The Grandjury brought in theire bill of presentments. 28: 8<sup>br</sup> 1674 & were discharged.

Order concerning m<sup>rs</sup> SARAH PICKERING

Whereas m<sup>rs</sup> Sarah Pickering was presented to this Court by the Grandjury for living from her husband: The Court on perusall of Evidence given in & Letters from her husband wherein hee doth renounce her as a wife & declares that hee never will come to her nor receive her as a wife nor liue with her as a husband The Court judge that the s<sup>d</sup> presentment doth fall & doe declare they see noe reason for her to bee presented or complained of for the future as a transgressor of the law in that kinde

VEERING discharg<sup>d</sup>

Vpon due proclamacion made John Veering was discharged from his bonds of good behaviour.

Audit for GILLAMS Accompt<sup>s</sup>

The Court Orders & appoints Cap<sup>t</sup> Tho: Lake, m<sup>r</sup> Jn<sup>o</sup> Richards & m<sup>r</sup> Peter Lidget a Committee (with consent of the persons) to audit the Account presented to this Court by Cap<sup>t</sup> Benjamin [280] Gillam & m<sup>r</sup> Joseph Gillam of theire administracion to theire Father Benjamin Gillam his Estate & to receive & hear what Objections may bee presented by m<sup>r</sup> Richard Sharp or others concerned in the same against that accompt & to make an ajustment thereof & in case they finde anything of difficulty to present it to the Court & to make theire Return of what they doe herein upon Thursday 12<sup>th</sup> Novemb<sup>r</sup> next. Cap<sup>t</sup> Tho: Lake to appoint time & place of meeting & all persons concerned are required to give theire attendance.

## FOGGS bond

Ezekiel Fogg principall in Fifty pounds & m<sup>r</sup> Francis Johnson & Henry Harwood as Sureties in twenty five pounds apeice all in mony acknowledged themselves respectiuey bound in Court to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the s<sup>d</sup> Ezekiel Fogg should personally appeare at the next Court of this County to answer for what hee shalbee charged with by Mary Hawkins for committing Fornication with her & begetting her with Childe & that hee should abide the Order of the Court therein & not depart without Licence & in the meane time bee of good behavio<sup>r</sup>

## DEERINGS Estate Setled

For the Setlement of the Estate of the late Samuel Deering of Brantery, his widow presenting an account of her administracion to the s<sup>d</sup> Estate The Court discharges her from her s<sup>d</sup> administracion & confirme the Estate Left upon the widow for her own Subsistence & bringing up of her Children & Order that the widow pay twenty Shillings apeice to the 7. youngest Children left by her s<sup>d</sup> husband as they arrive at theire respective ages The Eldest having had her portion already: And if there appeare to bee any Estate of Land at Quinebauge that was the s<sup>d</sup> Deerings that it bee equally devided between the s<sup>d</sup> Deerings eight Children when it is made to appeare.

HUBART Fined 40<sup>s</sup>

John Hubart of Hingham & his now wife being present<sup>d</sup> by the Grandjury for committing of Fornication before marriage, hee appearing acknowledged the Fact. The Court upon consideration of what hee alleaged by way of excuse & his sorrow for his offence, doe Sentence him to pay Forty Shillings in mony as a fine to the County in the behalfe of himselfe & his wife & to pay fees of Court standing committed untill the Sentence bee performed.

BLAKE alias BRIGGS Sentenc<sup>d</sup>

Joseph Blake, alias George Briggs being committed to prison to answer for his Suspitious company keeping with Deborah the wife of George Burrill & practising evill ags<sup>t</sup> the s<sup>d</sup> George; for night walking & prophane Swearing Upon due consideration of what was

alleaged & proved against him, (hee acknowledging himselfe to bee a married man in Lime, in England) The Court Sentenc<sup>d</sup> him to bee severely whip't with thirty Stripes & to pay fees of Court & prison standing committed untill the Sentence bee performed & to pay charges of prosecution [281] and Order him to return to England to his wife by the next opportunity of Shipping on the poenalty of twenty pounds in mony to bee forfeited to the County.

Order to Summon the Exec<sup>rs</sup> of the late Gov<sup>rs</sup> will

In pursuance of an Order of the Generall Court respecting the will of the late Govern<sup>r</sup> Rich<sup>d</sup> Bellingham Esq<sup>r</sup> The Court Orders the Clarke to Summons the Exec<sup>rs</sup> of s<sup>d</sup> will & m<sup>r</sup> Rich<sup>d</sup> Wharton to attend on thursday 12 Novemb<sup>r</sup> instant, after Lecture with reference to the s<sup>d</sup> Order.

BURRELL & ADAMS's bond forfit<sup>d</sup>

George Burrell & Abraham Adams being bound in a bond of Forty pounds for appearance of Deborah the wife of s<sup>d</sup> George Burrell at this Court: Shee not appearing upon due calling they her Sureties making answer Shee was escaped The Court declared their bond forfeited afterwards upon the petition of the s<sup>d</sup> George The Court was pleased to remit the forfeiture, the s<sup>d</sup> George Burrell paying ten Shillings in mony as a fine to the County for his being drunck & fees of Court.

FARNHAM Sworn a Freeman

Joseph Farnham of Boston tooke the Oath of Freedom of y<sup>s</sup> Colony

HARDING & TILLINGHAST Admonish't

Stephen Harding & Pardon Tillinghast both of Providence being bound over to this Court to answer for their comming from Providence to the Town of Mendam to Seduce people to their corrupt opinions, they being called did appeare: and upon hearing & consideration of what was alleaged against them & what themselves Owned, none of the Town of Mendam nor in their behalfe appearing to prosecute them The Court Admonished them & warned them of comming to Mendam for any such end Ordered them to pay fees of Court & discharg<sup>d</sup> them

ADAMS'S presentm<sup>t</sup> continued & order for Summons

Jonathan Adams of Medfeilde & his wife being present<sup>d</sup> to this Court to answer for theire absenting from the publique worship & being Summoned to appeare, hee excused his non appearance with the Sickness of his Family. The Court continued theire presentm<sup>t</sup> till the next Court of this County & Order them then to bee Summoned.

PUNNELL'S imprisonm<sup>t</sup> continued till Shee finde Security

Mary Punnell being committed to prison to answer for her Escaping from a former Court when Shee was upon tryall for severall misdemeanors & now appearing confessed that Shee was with Childe by James Jarrett The Court Orders that Shee bee continued in prison till Shee give in Security of five pounds for her appearance at the next Court of this County.

## POPE Admonish't

Thomas Pope being complained of for helping to convey away Mary Punnell from the hands of Justice, hee appearing Owned that hee did carry her over Boston Neck, but knew not that Shee was under any restraint: The Court Sentenc<sup>d</sup> him to bee admonished & to pay fees of Court.

## Freemen Sworn

Tho: Bligh, Tho: Smith, Rich<sup>d</sup> Sharpe & William Ingram all of Boston being admitted to the Freedom of this Colony by the Generall Court were now Sworn. [282]

FORBES Fined 4<sup>li</sup>

Alexander Forbes, being committed to prison to answer for his committing of Fornication with Katharin now his wife before marriage; which hee confessed in Court: The Court Sentenced him to bee whip't with fifteen Stripes or to pay four pound in mony as a fine to the County in behalfe of himselfe & his wife & fees of Court Standing committed untill the Sentence bee performed.



## FORBES Sent

Katharin Forbes late Robbinson being bound over to this Court to answer as aboues<sup>d</sup> which Shee confessed in Court: The Court Sentenced her to bee whip't with ten Stripes when Shee is delivered of the Childe Shee now goeth withall in case the four pound aboues<sup>d</sup> bee not paide by her husband & fees of Court Standing committed untill the Sentence bee perform<sup>d</sup>

## HARRIS Sent

Abraham Harris being committed to prison to answer for his Stealing of goods from the widdow of Jsaac Walker at the late fireing & blowing up of her Shop by Gunpowd<sup>r</sup> the saide Harris confessed in Court that hee did take up a peice of duecape silke which was founde with him valued at 11<sup>li</sup> The Court Sentenc<sup>d</sup> him to bee whip't with twenty Stripes or to pay five pound in mony as a fine to the County and to return m<sup>rs</sup> Walker her silke again & to pay her two & twenty pounds in mony being that threefold restitution that the Law requires & to pay fees of Court & prison standing committed untill the Sentence bee performed.

## BEDWELL Sent

Samuel Bedwell jun<sup>r</sup> bound over to this Court to answer for his stealing of severall parcells of Ribbon from Asaph Eliott valued at 38<sup>s</sup> some part of them being returned again Upon hearing of what was alleaged & proved against him & what himselfe confessed The Court Sentenc<sup>d</sup> him to bee whip't with twenty Stripes and to pay unto Asaph Eliott five pounds Fourteen Shillings in mony being that threefold restitution the Law requires discounting what hee hath already received in part thereof & to pay fees of Court Standing committed untill the Sentence bee performed & Order the Selectmen of Boston to take care to dispose of him to some good Service and Bezaliel Leveret a Childe who as hee saith founde some yardes of ribbon of the saide Eliotts amongs't his Shreads in his workehouse & sold it to the saide Bedwell The Court Orders his Father m<sup>r</sup> Hudson Leverett to correct him in the pu'sence of a Constable.

## MORTON Ordered to depart this Colony

Henry Morton being committed to prison to answer for Suspition of his having a hand in convaying away Deborah the wife of George

Burrell & goeing in a Suspitious manner between her & Joseph Blake alias George Briggs in prison since hee was committed & Shee under Sureties to answer for Suspitious Company keeping The Court Ordered him to bee continued in prison till hee give in bond of 20<sup>li</sup> with Sureties to bee of good behavio<sup>r</sup> till the next Court of this County & then to appeare. In answer to his petition The Court afterwards Ordered him to give his own bond of 20<sup>li</sup> to depart this Colony [283]

Order for DUBLEDAY's bond for good behavio<sup>r</sup>

The Court Orders that Roger Dubleday renew his bonds for the good behavio<sup>r</sup> till the next Court of this County.

HUNT & HAWKINS Ordered to pay charges

John Hunt Butcher being prosecuted by Tho: Drake of Waymouth for killing another mans Oxe & W<sup>m</sup> Hawkins jun<sup>r</sup> being his partner The Court upon hearing of what was alleaged & proved against them & what themselues answered by way of Excuse, Ordered them to pay Tho: Drake thirty Shillings in mony for his charges of prosecution.

Order concerning CURLES goods

The Court Orders that Js<sup>a</sup> Addington doe take into his custody & secure all such goods & household Stuffe as shalbee founde in the possession of Nicholas Curle, who lately came from Bristoll, or that doe belong unto the s<sup>d</sup> Curle untill farther Order; and that hee Signify to Cap<sup>t</sup> Robert Vicaris at Bristoll that the saide Curle is Seized & what goods are founde with him & the persons Names to whome they doe belong, requesting him to give Notice thereof.

The Court Adjourned to Thursday. 12<sup>th</sup> Novemb<sup>r</sup> at nine a clock in the morning.

TOWNSEND & THAYERS discharge to m<sup>rs</sup> Penn

Whereas Elder James Penn late of Boston deceased did by his last will & Testament give & bequeath unto us Hanna Townsend his Sister & unto Nathaniel Thayre in right of his wife Deborah his Kinswoman to each of us a Legacy of Fifty pounds apeice in mony to bee paide to us after the decease of his widdow & Relict (and

Executrix of his last will) m<sup>rs</sup> Katharin Penn: Now Know all men by these pu<sup>s</sup>ents that wee the saide Hanna Townsend & Nathaniel Thayre for & in consideration of the Summe of Forty pounds apeice in mony to us in hand paide by m<sup>r</sup> James Allen agent for the saide m<sup>rs</sup> Penn the receipt whereof wee doe hereby acknowledge doe each of us for o<sup>r</sup>selves o<sup>r</sup> heires Executo<sup>rs</sup> & administrato<sup>rs</sup> for ever remise release & quitclaime unto the saide m<sup>rs</sup> Katharin Penn her heires & Exec<sup>rs</sup> of & from the saide Legacy & Legacies & all other claimes & demands that wee or either of us might or should haue unto the Estate late the saide James Penns by virtue of his last will & Testament. Jn Witness whereof wee the abouesaide Hanna Townsend & Nathaniel Thayer haue hereunto put o<sup>r</sup> hands this 24<sup>th</sup> of Novemb<sup>r</sup> 1674 @

the marke of  
Hanna H T Townsend  
Nath: Thayer

Signed & Deliuered in the pu<sup>s</sup>ence of us  
John Wiswall senio<sup>r</sup>  
Anthony Stoddard senior  
Js<sup>a</sup> Addington 24-9-74

Hanna Townsend & Nathaniel Thayer acknowledged the aboue written to bee theire act & Deed. 24 9<sup>br</sup> 1674 before mee Edward Tyng Assist.

Entred per Js<sup>a</sup> Addington Cler [284]

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November 12<sup>th</sup> 1674 @

The Court met according to Adjournm<sup>t</sup>

Present

JN<sup>o</sup> LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>  
SIMON BRADSTREETE Esq<sup>r</sup>

EDW: TYNG  
W<sup>m</sup> STOUGHTON  
Majo<sup>r</sup> THO: CLARKE } Esq<sup>rs</sup>

Order for MARGAR<sup>t</sup> STEVENS returning to Charlestown

The Court Orders that the Clarke grant a warrant to the Constable of Boston to return Margaret Stevens the wife of Thomas Stevens to Charlestown the place of her aboade, Shee being left there by her

husband & provided for: The Court declaring that if any matter of charge happen by her & a dispute should arise about the same, that the Law is open; and that the Ferrimen doe not abridge her of passing too & again as other persons doe

CONNIGRAVES fine remitted to 10<sup>s</sup> & fees

In Answer to the petition of Elizabeth Connigrave referred to this Court from the Generall Court: The Court doth remit the fine of 5<sup>li</sup> imposed upon her at a former Court upon her present payment of ten Shillings in mony to the County Treasuro<sup>r</sup> & fees of Court.

NICKSON Fined 5<sup>li</sup>

Hope Nickson convict in Court by her own confession of Selling strong beare & some brandy without Licence The Court Sentenc<sup>d</sup> her to pay five pounds in mony as a fine to the County & fees of Court:

Order concerning BUMPAS

The Court Orders the Clarke to issue out warrant to the Constable of Boston to apprehend Hannah Bumpas & to put her onboard of some Boate bound for Hingham or Scituate, that Shee may bee returned to Marshfeilde the place of her aboade the Selectmen of Boston having Entred caution ag<sup>t</sup> her abideing here in this Town.

LOCK & his wife admonished

George Lock & Ruth his wife appearing before this Court, the s<sup>d</sup> Lock being complained of by his wife for severall abuses offered to her: The Court upon hearing of the matter doe Sentence the s<sup>d</sup> George & Ruth Lock to bee admonished & to pay fees of Court & Order the s<sup>d</sup> Ruth to live with the s<sup>d</sup> George Lock as her husband

DOBLEDAY Fined 5<sup>li</sup>

Roger Dobleday being bound over to this Court to answer for Suspition of his taking & rideing away of a horse of Tho: Dunns of Waymouth. The Court upon hearing of the severall Evidences & pleas in the case; as also what agreement the s<sup>d</sup> Dobleday had made with Tho: Dunn about the s<sup>d</sup> horse (with the consent of the Court) as to his Satisfaction, and what the s<sup>d</sup> Dobleday acknowledged in



his petition as to his confederating with & conniving at an Indian's takeing & rideing of the s<sup>d</sup> horse (which Indian was his pilot) the saide Dobleday at the time thereof being under bonds of good behavio<sup>r</sup> The Court declared his bond for the good behaviour to bee forfeit<sup>d</sup> and doe Sentence the s<sup>d</sup> Dobleday to pay five pound thereof in mony presently & fees of Court: and respite the taking of any more thereof untill farther Order hee standing committed untill hee pay the saide Summe.

#### GILLAMS Estate Setled

For the Settlement of the Estate of the Late Benj<sup>a</sup> Gillam sen<sup>r</sup> deceased, that is yet Left undisposed of: The Court having appointed a Committee to audit the acco<sup>t</sup> presented to this Court of Benj<sup>a</sup> & Joseph Gillam theire administracion to that Estate who haue made theire Return: And w<sup>t</sup> was Left undetermined [285] by the s<sup>d</sup> Committee, having been resolved by the Court, there being now the Summe of two hundred & Eighteen pounds twelue Shillings & nine pence left to bee devided of that Estate: The Court considering that Joseph Gillam hath already received his portion out of that Estate given to him upon his marriage The Court Orders that the s<sup>d</sup> Estate of two hundred & Eighteen pounds twelue Shillings & nine pence bee devided into two equall parts, the one halfe thereof to bee to the use of Cap<sup>t</sup> Benj<sup>a</sup> Gillam & his heires for ever; the other halfe thereof to bee devided into two equall parts between Zechariah Gillam and Rich<sup>d</sup> Sharpe (who married with Hanna the daughter of the late Benj<sup>a</sup> Gillam) to the use of them & theire heires for ever; Zechariahs part to bee paide in to the s<sup>d</sup> Sharpe as hee is Attourney, and if at any time hereafter there appears to bee any more Estate of the s<sup>d</sup> Gillams not yet known or Inventoried, that it bee disposed of to the abouesaide three persons according to the same proportion: And that what Estate did belong to the widdow & Relict of the s<sup>d</sup> Benj<sup>a</sup> Gillam at her decease bee disposed of according to her last will: and that m<sup>r</sup> Benj<sup>a</sup> & Joseph Gillam fulfilling this Order are discharged from theire s<sup>d</sup> administracion.

#### Order for WATSONS appearance

The Court Orders that Elisabeth Watson appeare the next Court of this County to give in her Reasons why m<sup>r</sup> Humphry Warren &

Cap<sup>t</sup> Samuel Mosely should not bee discharged from theire paiment towards the Maintenance of her illegitimate Childe begotten by Samuel Warkeman, for whome the s<sup>d</sup> Warrens predecesso<sup>r</sup> & s<sup>d</sup> Mosely were Sureties; otherwise they shalbee discharged.

PHILLIPS'S discharge

Deacon John Phillips presenting an acco<sup>t</sup> of his administracion to the Estate of Alice Clarke widdow deceased: The Court Orders, the ballance of his Acco<sup>t</sup> being Sixteen Shillings & six pence to bee deliuered to Susanna Francis the daughter of the deceased & the s<sup>d</sup> Phillips is discharged of his s<sup>d</sup> Administracion.

TURNERS discharge

m<sup>r</sup> W<sup>m</sup> Turner presenting an acco<sup>t</sup> of his administracion to the Estate of Daniel Guppy deceased was discharged therefrom.

This Court dissolved Novemb<sup>r</sup> 13<sup>th</sup> 1674. @ [286]

At a County Court held at Boston January 26<sup>th</sup> 1674.

Present

JN <sup>o</sup> LEVERETT Esq <sup>r</sup> Gov <sup>r</sup>	EDW: TYNG	} Esq <sup>rs</sup>
SIMON BRADSTREET Esq <sup>r</sup>	W <sup>m</sup> STOUGHTON	
	Majo <sup>r</sup> THO. CLARKE	

Grandjury Sworn

m <sup>r</sup> Ri: Collicot	Jn <sup>o</sup> Stebbin	Benj <sup>a</sup> Bates
Jn <sup>o</sup> Anderson	Dan <sup>ll</sup> Preston	Jn <sup>o</sup> Ellice
James Everill	Thomas Trott	Js <sup>a</sup> Bullard
W <sup>m</sup> Salter	Sam <sup>ll</sup> Bass	Tho: Metcalfe
W <sup>m</sup> Dawes	Jn <sup>o</sup> Baily	W <sup>m</sup> Salsbury
Tobias Davis	Jerm: Beales	

Jury of Tryalls Sworn

Cap <sup>t</sup> D. Henchman	Tho: Bacon	Jn <sup>o</sup> Jacob
Jn <sup>o</sup> Oliver	W <sup>m</sup> Lincorn	Ri: Ellis
Sam <sup>ll</sup> Jacklen	Jn <sup>o</sup> Withington	Nath: Fisher
James Hill	Sam <sup>ll</sup> White	Ebenezer Haydon

[ WEAVER v. WOODBRIDGE ]

John Weaver plaint. ag<sup>t</sup> Thomas Woodbridge Defendant in an action of the case for withholding his booke of accompts whereby hee is greatly disabled to make up a just accompt with the present Defendant & others to the damage of the plaintife about one thousand pounds & all other due damages according to Attachm<sup>t</sup> Dat. January 8<sup>th</sup> 1674. . . . The Jury . . . founde for the Defendant costs of Court

[ WEAVER v. WOODBRIDGE ]

John Weaver plaint. ag<sup>t</sup> Thomas Woodbridge Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. January 8<sup>th</sup> 1674. The plaint. withdrew his accion upon entring bond in Court with the Defendant for an Arbitracion

[ DEANE v. BISHOP ]

Thomas Deane of Boston plaint. ag<sup>t</sup> Thomas Bishop of Ipswich Defendant according to Attachment Dat. Decemb<sup>r</sup> 16<sup>th</sup> 1674. The plaint. withdrew his action.

## [ HARRISON v. WODDEE ]

John Harrison plaint. ag<sup>t</sup> Ensigne Richard Woddee Defendant in an action of the case for that the saide Woddee did injuriously cut down the Fence upon the Land of the saide Harrison claiming interest in the saide Land calling it common Land, pretending Town Order to make the Land common to the damage of the saide Harrison at Least two hundred pounds with other due damages according to Attachm<sup>t</sup> Dat. January 15<sup>th</sup> 1674 . . . the Jury . . . founde for the plaint. two Shillings damage & costs of Court, allowed by the Court twenty Five Shillings & eight pence.

Execucion issued February 8<sup>th</sup> 1674.

[See the review of this case, Woody v. Harrison, below, p. 651.]

## [ WOODCOCK v. HUES ]

William Woodcock of Hingham plaint. ag<sup>t</sup> John Hues of Hingham Cooper Defend<sup>t</sup> in an action of the case to the value of three pounds & eight Shillings for Eight cords & a halfe of wood w<sup>ch</sup> the s<sup>d</sup> Hues received of the s<sup>d</sup> Woodcock to Freight to Boston in a boate called the Forrester w<sup>ch</sup> the s<sup>d</sup> Hues then went in, in the yeare of our Lord. 1665. or thereabouts, w<sup>ch</sup> s<sup>d</sup> wood the s<sup>d</sup> Hues was to deliver to m<sup>r</sup> Peter Oliver of Boston on the account of the s<sup>d</sup> Woodcock the s<sup>d</sup> Hues being paide Freight for the s<sup>d</sup> wood; which s<sup>d</sup> wood the s<sup>d</sup> Woodcock have noe Legall account of with all due damages according to Attachm<sup>t</sup> Dat. 16<sup>th</sup> of Decemb<sup>r</sup> 1674. . . . [287] The Jury . . . founde for the Defendant costs of Court, allowed by the Court Fourteen Shillings & four pence.

Execucion issued. Jan<sup>ry</sup> 29<sup>o</sup> 1674.

HOLLOWAY & BUTLER ag<sup>t</sup> DAFFORN

William Holloway & Stephen Butler plaint<sup>s</sup> ag<sup>t</sup> John Dafforne Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. January 20<sup>o</sup> 1674. The plaint<sup>s</sup> withdrew theire Action upon agreement of a reference of the case to the Gov<sup>r</sup> Edward Tyng Esq<sup>r</sup> & major Tho: Clarke Esq<sup>r</sup> & all the Select men of Boston, to abide by theire determinacion or the major part of them in the case & engaged themselves in two hundred pounds apiece each to other to performe theire award.

vide p: 303



SPOWELL ag<sup>t</sup> GRIFFIN

William Spowell plaint. ag<sup>t</sup> John Griffin Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. January. 21<sup>th</sup> 1674. The plaint. withdrew his accion & costs granted the Defend<sup>t</sup> for Attendance three Shillings.

LYTHERLAND ag<sup>t</sup> VEREN

William Lytherland plaint. ag<sup>t</sup> Hilliard Veren Clerke of Salem Court Defend<sup>t</sup> in an action of the case for that hee the saide Veren under colour of his office hath granted forth an Execucion bearing date the .26. (6). 74. contrary to Law, upon which occasion the saide Lytherland is executed upon imprisoned & retained in prison to his damage of about Sixty pounds in mony with all other due damages according to Attachm<sup>t</sup> Dat. Novemb<sup>r</sup> 7<sup>th</sup> 1674. . . . the Jury . . . founde for the Defendant costs of Court, allowed by the Court, twelve Shillings Six pence.

[See above, pp. 500-4.]

WOODBIDGE ag<sup>t</sup> WEAVER

Thomas Woodbridge plaint. ag<sup>t</sup> John Weaver Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. January 9<sup>th</sup> 1674. The plaint. withdrew his action upon entring bond in Court with the Defendant for an Arbitracion

SHEFFIELD ag<sup>t</sup> HARRISON

Thomas Sheffield plaint. ag<sup>t</sup> John Harrison Defend<sup>t</sup> in an action of the case for refusing to deliver up all writings that belong to a parcell of Land which the plaint. bought of & was delivered by the saide Harrison to saide Sheffield in the Yeare One thousand Six hundred & Sixty four as by a Deed of the same date may appeare whereby the plaintiffe is damnified the value of Fifty pounds & all other due damages according to Attachm<sup>t</sup> Dat. January: 18<sup>th</sup> 1674. . . . the Jury . . . founde for the Defend<sup>t</sup> costs of Court allow<sup>d</sup> by the Court two Shillings 2<sup>d</sup>

ALLEN ag<sup>t</sup> EMMONS

Bozoon Allen plaint. ag<sup>t</sup> Obadiah Emmons Defend<sup>t</sup> in an action of debt of Sixteen pounds or thereabouts due upon ballance [288] of Account & all due damages according to Attachm<sup>t</sup> Dat. X<sup>br</sup> 3<sup>d</sup> 1674. . . . The Jury . . . founde for the plaint. thirteen pounds

twelve Shillings & Six pence in mony & two pounds four Shillings & four pence in hides at mony price & costs of Court twenty one Shillings.

Execucion issued pr<sup>o</sup> Feb<sup>ry</sup> 1674.

#### NORDEN ag<sup>t</sup> ROADES

Samuel Norden plaint. ag<sup>t</sup> John Roades Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. October. 24<sup>th</sup> 1674. The plaint. withdrew his action.

#### CUTLER ag<sup>t</sup> JACOB

Samuel Cutler of Salem Sonn & heire to John Cutler deceased plaint. ag<sup>t</sup> John Jacob Senio<sup>r</sup> of Hingham Defend<sup>t</sup> in an action on the case to the value of twenty pounds for the saide John Jacob refusing to give the saide Samuel Cutler possession of a great Lott lying in Hingham w<sup>ch</sup> s<sup>d</sup> great Lott containeth twenty acres of Land & was granted to the saide John Cutler deceased by the inhabitants of the Town of Hingham on the great plaine with all due damages according to Attachm<sup>t</sup> Dat. Decemb<sup>r</sup> 21<sup>th</sup> 1674. The parties by consent referred this case to the Eleven Juro<sup>rs</sup>. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court, allowed by the Court twelve Shillings & eight pence.

#### HUTCHINSON ag<sup>t</sup> PAINE

Eliakim Hutchinson & as hee is Executo<sup>r</sup> to the last Will & Testam<sup>t</sup> of his Father Richard Hutchinson Late of London deceased plaint. ag<sup>t</sup> John Paine of Boston Defend<sup>t</sup> in an accion of debt for not paying unto the s<sup>d</sup> Eliakim Hutchinson ten tunn twelve hundred of merchantable barr Iron, nor unto the s<sup>d</sup> Richard Hutchinson in London the Summe of one hundred Sixty nine pounds 12<sup>s</sup> sterling mony due by Obligacion bearing date the 28<sup>o</sup> Decemb<sup>r</sup> 1664. with forbearance & all other due damages According to Attachm<sup>t</sup> Dat. Decemb<sup>r</sup> 24. 1674. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court, allowed by the Court Eleven Shillings: The plaint. appealed from this Judgement to the next Court of Assistants. & the s<sup>d</sup> Eliakim Hutchinson principall in Five pounds & Cap<sup>t</sup> Edward Hutchinson & Free Grace Bendall as Sureties in Fifty Shillings apeice acknowledged themselves respectiuey bound to . . . prosecute his appeale. . . .  
[289]

[ The iron-works at Lynn were responsible for an immoderate amount of litigation (see Fogg v. Williams, p. 543, Leverett v. Fogg, p. 547, and Thayer v. Paine, p. 563, below). This particular case arose out of a specialty, or promise made under seal, of 1664 (S. F. 1362.6):

These presents Witness that J John Payne of Boston in New-England doe binde my selfe heires & Executo<sup>rs</sup> and administrato<sup>rs</sup> to pay unto Eliakim Hutchinson now resident in Boston Attourney to his Father Richard Hutchinson or to his or there heires Executo<sup>rs</sup> and assignes the just quantity of tenn tunn twelve hundred of Marchantable barr Iron at or before the last day of Septemb<sup>r</sup> next ensuing the date hereof in case of non payment of the forementioned Iron then to pay unto the saide Richard Hutchinson or assignes at the angle & Starr in Cheapside in London the Summe of One hundred Sixty nine pounds twelve Shillings Starling. In Witness whereof J haue hereunto Set my hand & Seale this 28<sup>o</sup> of December One thousand Six hundred Sixty & four; the saide Iron to bee paide at the Warehouse of the saide Hutchinson in Boston which is in full payment for the interest of the saide Hutchinson in the Iron workes

Per mee Jn<sup>o</sup> Paine & a Seale

Signed Sealed & Delivered in the presence of and his words (or assignes) enterlined before the Sealing & Signing hereof.

Samuel Hutchinson

Edward Hutchinson

George Pearson

Geo: Pearson Sworne Saith that hee was present at the Signing & Sealing this Wrighting & put his Name thereto as a Witness

Before Tho: Clarke assis<sup>t</sup> this. 27. 11. m<sup>o</sup> 74.

Own<sup>d</sup> in Court by m<sup>r</sup> Jn<sup>o</sup> Paine Janur<sup>o</sup> 27. 1674.

as Attests Js<sup>a</sup> Addington Cler.

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

Paine's copy of a disputed collateral agreement of 1667 between Richard Hutchinson, Oliver Purchase, and himself follows (S. F. 1362.7). It will be observed that this does not indicate that the agreement bore a seal, and does not show whether all three parties signed the agreement. The signature of Eliakim Hutchinson merely attests the accuracy of the copy. His contention throughout the case was that this agreement, even if ever executed, was unsealed, and so could not supersede the formal, sealed document of 1664.

Know all men by these presents that wee Oliver Purchase & Jn<sup>o</sup> Paine of New-England to ingage jointly & severally to pay unto Richard Hutchinson Iron Monger or any Agent of his in New-England the just quantity of ten tunn twelve hundred of Marchantable Barr Iron out of the first blast that the saide Purchase & Paine shall haue from the Iron workes of Lyn except some inevitable accident doe happen that the saide Workes cannot produce such a quantity of Iron then there shalbee a longer time granted for payment of the same for the true performance of which wee haue hereunto put our hands and Seales this thirtieth day of January Ann<sup>o</sup> Sixteen hundred Sixty Seven; it's to bee understood that there

shalbee allowed to the s<sup>d</sup> Purchis & Paine to make for their use in carrying on the workes ten tunn of Iron & then the aboue quantity to bee paide unto the saide Hutchinson, this Obligation being performed the saide Hutchinson is to deliver up to the s<sup>d</sup> Paine his bill formerly given to pay the saide quantity of Iron or mony in England and to give him a Deed for the part of the Iron workes sold him. This is a Coppie of the Obligation given mee.

E<sup>m</sup> Hutchinson

. . . true Coppie . . . Js<sup>a</sup> Addington Cler.

S. F. 1362.9

The Testimony of Oliver Purchis aged Fifty & Six, who testifieth & saith that m<sup>r</sup> Eliakim Hutchinson made an agreement or contract with m<sup>r</sup> John Paine of Boston and myselfe as Security for the payment of ten tunn & twelue hundred of Iron with relation to an interest in the Iron workes of Lyn as in that writing is specified; which writing beareth date the thirtieth day of January. 1667. & that the paper given into Court now of that saide date is the paper that m<sup>r</sup> Hutchinson aforesaide gave to this Deponent as the Coppie thereof under his hand & farther Saith not

Sworn in Court Janur<sup>o</sup> 29. 1674

as Attests Js<sup>a</sup> Addington Cler

. . . true Coppie . . . Js<sup>a</sup> Addington Cler

In the following Reasons of Appeal by Hutchinson (S. F. 1362.3), the admission by the appellant that proving of payment could make void a sealed instrument is remarkable if meant as a legal rule, since payment did not become a defense to a specialty in the English law courts until 1707 (by statute). Perhaps the courts of the colony had already adopted this rule for practical convenience.

Eliakim Hutchinson his Reasons of appeale in the Case between him as plant<sup>ff</sup> & John Paine Deff<sup>t</sup> tried at the last County Court in Boston

Becaus the speatality which the plant<sup>ff</sup> Sues appears in Court Faire & vncancelled & owned by the Deffend<sup>t</sup> in Court to be his hand & seale & his act & deed, and he doth not so much as pretend any payment of any part of the same therein specified to be paid to the plant<sup>ff</sup> or his order, therefore the sd speaciatly must of Necesesity stand Good and in full force against the defend<sup>t</sup> (both in law Reason & equity) as J humbly conceiue, yett notwithstanding the Jury at y<sup>e</sup> last County Court weare pleased to finde against mee Wherefore J appeale to this hon<sup>d</sup> Courte

And whereas the Deffend<sup>t</sup> pretends a Collaterall agreement that Cutts off the force & bindeing vertue of the speatality J sue, J doe posetiue deny any such agreem<sup>t</sup>, neither doth any such agreement or Couenant appeare in the Case; the grownd of his pretence is from m<sup>r</sup> Purchis his Testimony that he had w<sup>th</sup> m<sup>r</sup> Paine done so & so, and giues in a paper as a Coppie of what they had done which Coppie Dus not say that J had made any such agreem<sup>t</sup> or couenant w<sup>th</sup> them but doth in effect say that the speatality sued shall stand good against him till J am paid, Neither doth sd Purchis his single Testimony, Legally proue there was any such writeing, and if there weare any such writeing as the Deffend<sup>t</sup> pretends to be giuen mee (iff the paper in Court be a true Coppie) it doth not declare there was any agreem<sup>t</sup> of the plantiff to it, though m<sup>r</sup> Purchis is pleased to say so in



his oath which oath corresponds not with (but contradicts) the [writeing he swears too, and if no agreem<sup>t</sup> of the plant<sup>ff</sup> in y<sup>t</sup> writeing (as there is not) then m<sup>r</sup> Purchis his oath must of Necessety be invallid in law as J humbly conceiue, for that cannot bee an agreem<sup>t</sup> where but one party consents, but sd pretended paper only appears to be a further promise or a way presented to giue mee hopes of a speedy payment, by m<sup>r</sup> Paine together with m<sup>r</sup> Purchis, to pay mee Tenn Tonn Twelue hundred of Iron out of the first blast from the Iron workes except some Jneuitable accedent happen, That the sd workes cannot produce such a quantity of Iron then there shall be a longer time granted for paym<sup>t</sup>, Now if any ineuitable accedent had happened they should haue required a longer time, but the workes are still standing, and no ineuitable accedent happening they are without Excuse; and this seemes straing that if m<sup>r</sup> Paine referr mee to his steward for payment of his Debt And the sd Steward together w<sup>th</sup> the principall obligeth that sd debt shall be paid out of the principalls Estate (as it is produced or comes to his hands) and if this steward cannot raise effects, or if he doth conuert them to some other vse, will the giueing such a writeing pay a speatialty thus proved and owned, J humbly conceiue it will not, And Further m<sup>r</sup> Purchis did own in Court there had ben a blast and that there was made so much sow Iron as would produce about tenn Tonn of B[arr] Iron, which somthing agrees w<sup>th</sup> what m<sup>r</sup> Paine formerly told mee that there was Iron enuph made at the workes (besides Tenn Tonn) to pay mee, and that he wounded what m<sup>r</sup> Purchis did that he had not paid mee; and said works haue made many a Tonn of Iron since that time, but yet they haue not paid mee, all which considered that pretended writeing doth implicitly declare that the sd m<sup>r</sup> Paines speatialty sued for to pay the sd quantity of Iron or Mony in England is in full force & vertue, otherwise why was it not taken up when the pretended bill was giuen, but J plead to avoide that that indeed is not, for no such bill or Couenant or agreem<sup>t</sup> appears, And its verry straing to mee that the Jury should giue so much Credit to m<sup>r</sup> Purchis his Coppie of a pretended agreement or couenant which pretended orionall neither my hand nor seale is vnto, and which J doe posetiue deny to be any agreement of mine, as to make m<sup>r</sup> Paines bill (vnder his hand & seale & owned in Court by him) to be void of none effect, it being a receiued maxim that nothing but the hand and seale of the Creditor can make void y<sup>e</sup> hand & seale of the Debtor except payment be proued, And whereas The deffend<sup>t</sup> pretends that he has no consideration for his mony J answer he hath the Jntrest of the plaintiffs Father Richard Hutchinson in the Ironworkes at lyn and hath had the Improuement of it for about Ten yeares neither did J euer deny to giue him deed of sale for the same, all w<sup>ch</sup> J present to the Hon<sup>rd</sup> Court

Eliakim Hutchinson

These Reasons were received Febr<sup>o</sup> 25<sup>th</sup> 1674/5

per Js<sup>a</sup> Addington Cler

S. F. 1362.4

Jn<sup>o</sup> Paine his answers to m<sup>r</sup> Eliakim Huchinsons Reasons of Appeal to this Honor<sup>ble</sup> Court of Assistance

To the fir<sup>t</sup> that y<sup>e</sup> Specialty is Sealed, vncancelled, Owned, no payment made or pleaded to &c therefore must Stand Good. Paine Answers

Itt is not the name but nature, matter & forme that Constitutes, hoc esse aut non. Ther can bee no specialtye or Obligation absolute, but for actual Con-

sideration; and wrightings vpon condition, or for consideration to be performed, Oblige not vntill performed; and are properly but agreem<sup>ts</sup> for bargaine & acts but jn fieri: to w<sup>hich</sup> If ther be not a penalty to injoyne each to performe, they are both at liberty as in this case for woold m<sup>r</sup> Huchinson obliged Paine, he must haue tendered the Consideration. for had Paine, paid m<sup>r</sup> Huchinson without a Deed, hee Couold Not haue Obtaynced one by Law. And our Law alloweth not of fraudulent acts. Title Conveyances Page 32. Our Law. Then Since that neither Obligation nor specialty, truely So called, but only an agreem<sup>t</sup> in order to, or nature of a written bargaine, without Penalty, and Obligeing but answerable to Condition or Consideration therin mentioned & Resting on m<sup>r</sup> Huchinsons part to p<sup>r</sup>forme, w<sup>ch</sup> hee neglects; And that the Las<sup>t</sup> clause in an agreem<sup>t</sup> (or Obligation if this mought be called so) Is that which bindeth what preceeded, or maketh voyde the whole; which clause is the consideration in y<sup>e</sup> wrighting Sued & neglected to bee performed by m<sup>r</sup> Huchinson. I humbly leaue it to the honr<sup>ble</sup> Court of Assistance & y<sup>e</sup> Jury To determin whether m<sup>r</sup> Huchinson hath not fayleed in & made voyd the wrighting hee now Sues.

Secondly. m<sup>r</sup> Huchinson hath & may Produce a Second agreem<sup>t</sup> of an after Date for the Same thing vnder hand & Seal as true a Specialty as the first<sup>t</sup> (were either so) the counter or interchangeble part to this in Court of the Latter Date, vnder m<sup>r</sup> Huchinsons owne hand, which himself owne<sup>d</sup> Jn thes wordes. it might bee my owne wrighting. but quearied how that Should cut of his Obligation &c. which for erreffrajable Reason it cannot but Doe. First<sup>t</sup> from Reason equity & Law, neither of which alloweth [of] two agreem<sup>ts</sup> to hould good agains<sup>t</sup> a Man for one and the Same thing<sup>e</sup>: [Much] les for nothing<sup>e</sup>; but the Latter, if [two], is only Suable, which is this case. Since then m<sup>r</sup> Huchinson, as Sensible the first was vnequall & J was drawne in by pretence of a bargaine, of no bargaine, of my Fathers makeing<sup>e</sup> which woold not proue, or his jnteres<sup>t</sup> valluable, to hould the first<sup>t</sup> ag[reem<sup>t</sup>] doth thereuppon Let fall the first<sup>t</sup> & come to a Second agreem<sup>t</sup> which Seemeingly hath more apperance of equity<sup>e</sup> & Plain dealeing; wherein is other Conditions benifits & easem<sup>t</sup> which Plainely doth proue it a Colateral agreem<sup>t</sup> and what m<sup>r</sup> Huchinson himself hath in equity & for great Reason [granted] I trust this honor<sup>d</sup> Court cannot in equity<sup>e</sup>, Reason, or Law [nor will not take] from me

To the 2<sup>d</sup> Objection or part of m<sup>r</sup> Huchinsons Reason Expressing thes wordes I doe positiuely<sup>e</sup> deny any Such agreem<sup>t</sup> neither doth any Such agreem<sup>t</sup> or Couenant appere in the case. I Intreat m<sup>r</sup> Huchinson in Respects to his freinds & those who haue a higher esteem of him then to Conclude he jntend [torn] one possitive vntruth; therefore to giue his owne Sense (if it may bee) to free himself from Just feares of his tendency to Popeish tennets allowing the Lawfullnes [of] Mental reseruations &c in affirmations and Oathes without which J can no wise conseiue how those words can bee cleered from absolute and apparent Falsehood.

Farther to those words. And giues in a paper as a Coppie which doth not Say that I had made any Such agreem<sup>t</sup> or Couenant with them. Paine Answers

The wrighting called a Copie was an agreem<sup>t</sup> in it self (in fieri) & therefore needed not mention any other agreem<sup>t</sup> being J say the Original Counterpart or interchangeble act of m<sup>r</sup> Huchinson vnder his owne hand by himself deliuerd m<sup>r</sup> Purchase & myself together: & Rec<sup>d</sup> by vs, as his act with the condition & Considerations on both parts agreed to, & by himself drawne vp: Obliging him to Me, as the other part Obligeth vss to him. & Suffitient as wee conseiued for an agreem<sup>t</sup> in firi, as afores<sup>d</sup>.

To m<sup>r</sup> Huchinsons Objection that this Latter agreem<sup>t</sup> is not Sealed Paine Answ<sup>rs</sup> Jtt is the Consideration that Obligeeth, giues virtue and forces. the Seal is no more then a sircomstantial Evidence, or Sighne of the thing Done; to which act if ther bee no more but his hand, & legal evidence to the wrighting made & Deliuered, on jus<sup>t</sup> consideration j wil ventor y<sup>e</sup> Case though ther be no Seal. but the interchangeable part in his owne hand J suppose wil appere with a Seal, although that J Was not So Scrupelous, Expecting a Deed from him.

To m<sup>r</sup> Huchinsons mistaken Inference with his quibbles, trivial Objections, & tedious discourse, I esteem not deserueing an answer. But humblye craue this honord Court to p<sup>r</sup>vse the agreem<sup>ts</sup> and Evidences, and way the Same. M<sup>r</sup> Purchases Oath, which the Appellant Objects against<sup>t</sup> he mought haue Saued y<sup>t</sup> Labor, Considering m<sup>r</sup> Purchases evidence is not for himself, & is no more then what the apelant owned in owneing the Second agreem<sup>t</sup> Jn the Last County Cour<sup>t</sup> as hath been alledged, & I doubt not May be Remembored by Some of the judges and others in that hon<sup>rb</sup>e County Cour<sup>t</sup>, but had he denyed it then as Stoutly<sup>e</sup> as he woold Seemingly doe now, the act Sworne to by m<sup>r</sup> Purchase; delivered to him & mee together by m<sup>r</sup> Hutchinson vnder his owne hand appereinge Jn Court with other demonstrations, & Sircomstantial Evidences. j doubt not cannot but Satisfisye the Gentlemen of the jury. Espesially compareing that jn Iohn. 8<sup>th</sup> 17 & 18 vs: with our Law, which alloweth of such evidence (as the word of god alloweth) to be good Jn Law. I leaue the case with this honorble Cour<sup>t</sup> & Iury. And

I Humbtely Subscribe.

In<sup>o</sup> Paine

[ *Marginal notes, in the same handwriting, beside the last paragraph:* ]

The 2<sup>d</sup> agreem<sup>t</sup> doth indeed provide y<sup>t</sup> y<sup>e</sup> first shal be voyde, but doth positiuely gran<sup>t</sup> other conditions & furdur time for fulfilling the [2<sup>d</sup>] w<sup>ch</sup> Js not Yet lapsed, nor [torn] tha<sup>t</sup> agreem<sup>t</sup> Sued.

And that our Law doth allow of other evidence Jn case of Life & death to be equiulent to two witnesses, & those of weight in that case, as in folio 15:8. the evidence in this case, wher ther is two evidences beside y<sup>e</sup> act aperinge must needs be legal.

[ *Final note:* ]

for his pretene<sup>d</sup> Intres<sup>t</sup> jn tru<sup>th</sup> I Know it not. nor hath he at any time mad<sup>e</sup> it out to mee.

The substance of this Answer is repeated in a petition by Paine to the Court of Assistants (S. F. 1362.5). Also, on the reverse side of the copy of the disputed collateral agreement (S. F. 1362.7) reproduced above, Paine's pleas are to be found once more, substantially as in his Answer. (A note by Edward Rawson, Secretary of the Court of Assistants, informs us that these arguments on the reverse side of the agreement were "not read in the County Court nor this.") The most interesting passage in the document declares:

Though an Attachment bee a legall demand of a positieue debt for w<sup>ch</sup> consideration is rec<sup>d</sup> it is not soe in a conditionall contract without the condition performed



or tender of the consideration which should give being or bindeing virtue to the contract that is but in fieri, a thing doing & not done, nor doth the Law inforce any man to pay mony to another for nothing consequently it allowes not of such an obligation that bee bindeing to the one party & the other to whome that party is bound to bee free, law being but the ballance or distributive power of Equity

Paine also says that the collateral agreement of 1667 was intended "in way of Easement" of the 1664 specialty, "Mr. Hutchinson being sensible the Sale pretended by my [his?] Father would not prove soe & that it was on higher terms then any part had been sold at." The exorbitant price alleged was evidently the fraud in the 1664 transaction of which Paine frequently complains, and his contention is that the parties substituted the fairer terms of the 1667 agreement, which gave Paine and his associates a longer time for the delivery of the iron.

The action of the Court of Assistants on the appeal (Records, i. 28) is recorded as follows:

Eliakim Hutchinson plaintiff ag<sup>t</sup> John Payne deffendant in an action of Appeale from the virdict of the Jury & County Courts Judgm<sup>t</sup> . . . the Jury . . . found a speciall virdict i e. If the Collateral contract or Agreement betwixt m<sup>r</sup> Eljakim, Hutchinson m<sup>r</sup> olliuer purchis & m<sup>r</sup> John Payne bearing date the thirtjeth of Janua<sup>r</sup>y 1667: not proved broken doth according to law cut of or make voyd m<sup>r</sup> John Paynes obligation to saj<sup>d</sup> m<sup>r</sup> Hutchinson bearing date the 28<sup>th</sup> of Decembe<sup>r</sup> 1664 then wee finde for the now deffendant the Confirmation of the Judgment of the County Court at Boston & Costs of Courts But if m<sup>r</sup> John Paynes first obligation standeth in force according to Law then wee finde for the now Plantiffe the reuersion of the former Judgment of the Court Appealled from w<sup>th</sup> one hundred sixty nine pounds twelve shillings money according to obligation by bill & Costs of Courts The Court or Bench on Consideration of this virdict declared they found for the deffend<sup>t</sup>.

This special verdict of the jury, which found for neither the plaintiff nor the defendant, but merely determined the facts making the original specialty good unless superseded, and left the rest of the case to the court, was in accordance with the law of the colony. On page 86 of the General Laws and Liberties, title "Jurors," it is decreed that "if there be matter of apparent equity . . . the Bench shall determine such matters of equity." Since, in contemporary English legal practice, a sealed obligation was such a solemn affair that a jury was not allowed to upset it by finding extrinsic facts like payment, fraud, or accord and satisfaction, the action of this jury in leaving the equitable defense — the collateral agreement — to the decision of the Bench is easily explicable.]

COLLICOT ag<sup>t</sup> SHEAFE

Richard Collicot the Assigne of L<sup>t</sup> Richard Cooke in the behalfe & for the vse of Rebecca Hawkins wife of Thomas Hawkins & At-



tourny to her saide husband, plaint. ag<sup>t</sup> Sampson Sheafe Defend<sup>t</sup> in an action of the case for withholding her just due of her right of thirds in the houses & Lands formerly her husbands mortgaged to m<sup>r</sup> Thomas Thacher one part & another part to m<sup>r</sup> Sampson Sheafe the which right the saide Rebecca by much perswations gave up her right to m<sup>r</sup> Sheafe on condition to receive her part in mony when the house & Land were sold, w<sup>ch</sup> were sold as ready mony for Five hundred & Seventeen pound w<sup>th</sup> other due damages according to Attachm<sup>t</sup> Dat. January 20<sup>th</sup> 1674 . . . the Jury . . . founde for the Defendant costs of Court.

[See Sheafe v. Hawkins, p. 1, and Hawkins v. Sheafe, pp. 275, 416, above. This case was reviewed at the April Court; see below, p. 564.]

#### FLOYDE ag<sup>t</sup> WRIGHT &<sup>a</sup>

John Floyd Attourny to Henry Dispaw Senio<sup>r</sup> & Henry Dispaw jun<sup>r</sup> plaint. ag<sup>t</sup> John Wright Esq<sup>r</sup> John Giffard & Ezekiel Fogg, them or either of them Defendants in an action of the case for Five hundred pounds being the Forfiture of a bond of Lawfull mony of England bearing date the Eleventh day of the month of August 1673. & all due damages according to Attachm<sup>t</sup> Dat. January: 6<sup>th</sup> 1674. . . . The Jury . . . founde for the plaintiffs Forfiture of the bond & cost of Court, allowed by the Court Forty three Shillings & four pence.

Execucion issued Feb<sup>r</sup>: 5<sup>o</sup> 167<sup>4</sup><sub>5</sub>

[See Massachusetts Bay Records, v. 35, and petition of John Giffard, based on that action, in S. F. 1420.]

#### NOYSE ag<sup>t</sup> WAYTE

John Noyse in right as hee married one of the Executrixes of m<sup>r</sup> Peter Oliver & in behalfe of the rest of the Executrixes & Executors to the s<sup>d</sup> m<sup>r</sup> Peter Oliver deceased plaint. ag<sup>t</sup> Marshall Richard Wayte administrato<sup>r</sup> to the Estate of Nicholas Stevens deceased Defend<sup>t</sup> in an action of the case for non payment of twelve pound four Shillings & four pence in mony, remaining due to the s<sup>d</sup> Executors & Executrixes for the acco<sup>t</sup> of Moses Chaplain upon or according to the Summe proportioned by Cap<sup>t</sup> Edw: Hutchinson & m<sup>r</sup> John Richards as a Committee appointed by the Honored County Court for the same, out of the Estate of the s<sup>d</sup> Stevens unto the saide Executors & also confirmed by the s<sup>d</sup> County Court for a division & Satisfaction

to bee made as aboues<sup>d</sup> to the Executo<sup>rs</sup> & other due damages according to Attachm<sup>t</sup> Dat. January 21<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. twelue pounds four Shillings & four pence in mony & cost of Court allow<sup>d</sup> by the Court twenty five Shillings & ten pence.

Execucion issued Feb<sup>r</sup> 24<sup>o</sup> 167<sup>6</sup><sub>7</sub>

Ordered to direct Execucion to the Marsh<sup>l</sup> Gen<sup>l</sup> [290]

JEWETT ag<sup>t</sup> RAWSON &<sup>a</sup>

Jeremiah Jewett Sonn & heire to Joseph Jewett of Rowley deceased & Executo<sup>r</sup> with Philip Nelson to the Estate of the s<sup>d</sup> Joseph Jewett deceased plaint. ag<sup>t</sup> Edward Rawson & Bozoon Allen who was his Attourney Defendant<sup>s</sup> The plaint. in failure of process was Non Suited. the Attourney onely being Attached & costs granted to Bozoon Allen Nine Shillings.

SMITH ag<sup>t</sup> DECROW

Benjamin Smith plaint. ag<sup>t</sup> Valentine Decrow Defend<sup>t</sup> in an action of the case for the saide Decrow his not delivering unto the saide Smith a just & true account with the produce thereof of the two thirds of the Earnings of my two horses & a cart for the space of about one yeare & Five months accounting from 31<sup>o</sup> of October. 1671. untill the Latter end of June. 1673. that the saide Decrow went with the saide Cart & horses & hee was to have one third of the Earnings for his Labor & the saide Smith two thirds thereof of the saide Cart & horses & due interest for the forbearance of his mony & other due damages according to Attachm<sup>t</sup> Dat: October. 27<sup>th</sup> 1674. . . . The Jury . . . founde for the Defendant costs of Court, & allowed by the Court, thirty Shillings & two pence.

ATWATER ag<sup>t</sup> BALSTON

Joshua Atwater plaint. ag<sup>t</sup> Jonathan Balston Senio<sup>r</sup> Defend<sup>t</sup> in an action of the case for non paiment of twenty Seven pounds nine Shillings & nine pence in mony due upon ballance of account due by booke, with due interest for the same & due damages according to Attachm<sup>t</sup> Dat. January. 19<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. twenty Seven pounds Nine Shillings & nine pence in mony & costs of Court, allowed by the Court twenty six Shillings eight pence.

m<sup>r</sup> Joshua Atwater personally appeared in the office Aprill: 17<sup>o</sup> 1675 & acknowledged hee had received full Satisfaction for this judgement from Jonathan Balston. as Attests J: A: C

BATT ag<sup>t</sup> HARRIS

Paul Batt plaint. ag<sup>t</sup> John Harris Defend<sup>t</sup> in an action of Appeale from a judgement of the Worshipfull Edw: Tyng Esq<sup>r</sup> on the 7<sup>th</sup> Decembr<sup>r</sup> 1674. . . . The Jury . . . founde for the Defend<sup>t</sup> confirmation of the former Judgem<sup>t</sup> & costs of Courts. The plaint. appealed from this Judgem<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> Paul Batt principall in £5. & James Green & W<sup>m</sup> Rawson as Sureties in 50<sup>s</sup> apeice acknowledged themselves respectuely bound to . . . prosecute his appeale . . . [ 291 ]

[ Batt had been found liable by a Commissioner's Court on 23 June 1674, and thence appealed (S. F. 1355.4). He was again tried by a Commissioner's Court on 7 December 1674, and thence appealed (S. F. 1355.5). After this third defeat, at the hands of the County Court, he appealed to the Court of Assistants (S. F. 1355.6):

Resons of apeale from the Iudgment of the honoured County Court held in boston the Case depending and theire tryed betweene Iohn Harres and Paul Batt Vnto this honoured Court of Assistance.

1<sup>o</sup> Where as the apealant did Earnstly plead for Anonsute at the County Court; Which hee Conceues ought to haue bin granted according to Law, and practis of Courts, the apealant then prouing to the Court that hee Was Worangfully Sued and condemned at the Worshipfull M<sup>r</sup> Tings court, by R[eas]en: the Very Same case matter and thing Was and had been Sued at the Comitionars court; and the honowred court of asistance; and cast in that Superior court for Said Batt, Which cause could nott in Law be sued againe by S<sup>d</sup> Harres; butt by an Acttian of Reuiew in the first court, and much les in and before a Single maiestrat, as apears by the Law title trayles folio 152: Sextion the first, and the actian now depending was nor is any actian of Rewew, apears by all the Records in the Case, and Likewise to proue that this Very case and matter of action is the Very Same that had bin first tryed in the Superior courtts as afore S<sup>d</sup> apears by the Resons of apeale from The Comitionars Court N<sup>o</sup> 1: Sited theire for Refusing to pay the Ballance of the acompt, Which apears to bee the Same Somme now Sued for and Very acompt word for word & Ballance Sued theire for N<sup>o</sup> 2: doth agree with the atachment Verbatim Sued at court of asistance N<sup>o</sup> 3: and at Comitionars court and by the Iudgment of the court of asistance N<sup>o</sup> 2: all which Records proues, where as one of them was Sufisient to proue itt one and the Same Case and actian, and that in particular the acompt and Ballance Word for Word to bee Sued in two Distinct Courts and not bee one and the Same Case and actian, and yett I Was Refused A nonsuet for Which I apealed:

2<sup>d</sup>: Reson the apeland Consiuies the Iury did not Consider his case nor paruse his papers, afectually by which they Very much mised a true Verdit and that



frist it apears by the accompt hee Sues Vpon is Very false and Eronius and the Said accompt considered proues the Said harres in Batts debt, Vpon Ballance seauen Shilings, as apears by [2]: hh<sup>ds</sup> and 2: Barells at 15<sup>s</sup> leaft and Desposed Contrary to Said Batts order, nor Brings no Receipt for them if left nor gaue any Credit for them but a Blank, and for Comision charged for Retornes one the Debtar Sidd of his acc<sup>ot</sup> of 15£ 1.<sup>s</sup> 3<sup>d</sup> When all he Retorned was but 3: Barells of Sug<sup>t</sup>: Which Come but to 7<sup>li</sup> 8<sup>s</sup> 3<sup>d</sup> the Comision of Which: is but 7<sup>s</sup>: 5.<sup>d</sup> and hee charged 15<sup>s</sup> for itt: Next hee charges Comision for Kiping in his hands or paing him Sealfe for freat Dwe at Iamaico, With my mony for £6:4<sup>s</sup> 4<sup>d</sup> and the Next post is 15<sup>s</sup> 9<sup>d</sup> Which is for Comision of Sayles in itt Sealfe and yett hee takes Comision for it againe As Retturnes, Which is Comision Vpon Comision Which Said 6<sup>l</sup> 4<sup>s</sup> 4<sup>1</sup>/<sub>2</sub><sup>d</sup> and 15<sup>s</sup> 9<sup>d</sup> charged for Rettornes and C[omision] taken of itt as Retornes is a grose Error, With the Rest and it is to bee Wondered at, that any Vpon theire oaths Should Take no notise and Slight ouer Such Palpable and manifest Errors Which Errors makes Seauen Shilings Dwe to the apeallant Vpon Ballance of Said harres one acc<sup>t</sup>, now Sued, the Which is more particularly his Errors Explained in my Resons of apealle N<sup>o</sup> 5: [from] the Worshipfull m<sup>r</sup> Ting's Sentence to y<sup>e</sup> honoured County Court, Which I hombly desier may bee by the Jentillmen of the Iury now Strikttly Exsamened and efectually obsarued for the fainding Out the Errors a fore said, and Doing mee Right, and also in the for [torn] former Resons is Sited and made out by Comen Rezon the Vncertantys and Varyations of m<sup>r</sup> Taping and m<sup>r</sup> Rabinson[s] oaths as to the Case that Speaking about freight as aparticular thing and the Case now Depending Consists of one accompt of near about 40: particulars the Ballance of all Which is Sued for and not for freight. had hee Sued for 14: or 15<sup>s</sup> Dwe for freight itt moaght Some thing Conca[r]ne theire Depositions but not in this Case

Lastly I doe hombly Consue that a Iury being Sworne to goe a Cording to Law and Euidence that if in case anonstute is pleded for before them to the bench and proued by Law and practis that the nonsute ought to haue ben granted as I Conseue my Case was and if the Bench Refuse the nonsute that then the Iury ought to Exsaming the matter Whethar the Play for a nonsute was good and if Soe they are to find for the party that the nonsute was Dwe unto for that the Jurys are as Well Judges of Law as the MaJestrats or Else Where fore are they Sworn to goe by Law as Well as EVidence and the Law is positue as before Sited title tryel[s] folia 152 first Section that this Case Cannot Legaly bee prosecuted but by way of Reuio Which is not done as apea[rs] by the Case being brought beefore m<sup>r</sup> Edward Ting from Whence the Case now Proceeds the Which I Referr to the Considration of this Honoured Court and Jentillmen of the Iury Whethar the Case can Legaly now Proceed Nott being Vpon Reuiew aCording to Law and practis of Courts, Thus humbly Crauing the premeses may bee Efectually wayed by this Honoured Court and Jentillmen of the Iury for the Relife of Yourre Most homble Saruant

Paul Batt

These Reasons were received Feb<sup>ro</sup> 25<sup>th</sup> 1674.

per Is<sup>a</sup> Addington Cler

Answer thereto was made by a woman attorney (S. F. 1355.7):

Elizebeth Harris Atorny to her husband Jn<sup>o</sup> harris her Answer to Paull Batt his Resons of apealle from the honored County Courte held In boston vnto this honored Court of assistanc



1 where as hee ses hee had wrong dunn him by the worshipfull m<sup>r</sup> Tyng and by the honored County Court In not grenting him a nonsute which ought to haue bin according to law. the same Case as hee pretends haueing bin tried before: for Answer wee doe affirm that this Case was neuer tryed before In any Court: and therefore no ground for A nonsute: had it bin tried before as he ses it had bin esy for him to haue produced the former atachment which wold haue desided the matter being Compared: with this atachment

2 Where as he supposeth the Jury did not Consider his case nor peruse his papers and ther for mist it In there verdict: and his Reson is because of the 2 hh and 2 bb Jn<sup>o</sup> harris left In m<sup>r</sup> willises hand Contry to his order: In his former Resons he ses with out his order wee doe not well vnderstande what hee means In so saying: tis as much as to say that becose In<sup>o</sup> harris had no order to leaue any of his goods that wer vnsold behind In Jemaco that ther for what hee cold not sell he ought to haue brout back againe which is verrey evacional so to Reson for the fraite of thos cask back wold haue bin fue tims more then there worth. but his saying hee gaue Jn<sup>o</sup> harris no order to leaue any of his goods In m<sup>r</sup> willess hand that were vnsold is falls for hee did giue him Exspres order so to doe although it were uerball: and had there bin need wee cold haue proued it: but tis not matterial whether he did or no as this case is sircomstanced: for thes goods of his were nothing but old dry cask In which had bin the appels on onions or sum of thos goods specified In the accoumpt which cask hee cold not sell and ther fore was forced to leaue them behind and what he did was the best way for the apelants aduantage: and for his aleding he shold haue brought a receipt of there being left for Answer m<sup>r</sup> willess was not at home when they were left In his custody: and had hee bin there tis a question wether hee wold haue trubbelld him self to haue giuen a Resate for such pittifull things as thos cask were. and where as he Reckons Jn<sup>o</sup> harris D<sup>r</sup> 15<sup>s</sup> for thos cask. John harris neuer bought any of him and if hee had hee wold not haue giuen half that price: because Jn<sup>o</sup> harris giues him C<sup>r</sup> after that rate for sum cask hee sould of his there fore hee wold force him to alow as much for old cask that hee cold not sell which is verrey vnreasonable if Jn<sup>o</sup> harris hath dunn him no wrong and hee might haue bin paide long a goe for those cask if hee wold haue Receiued it by m<sup>r</sup> willess but nothing will doe but Jn<sup>o</sup> harris must [out] set it In his a coumpt

for his Charging Jn<sup>o</sup> harris with a falls accoumpt wee are loth to trouble the court to heare answer to such Resons hee gius accept there were more In them his paying frate Is as Real Retorns as any of the Rest and the practis of others In charging comicion In such case is well vnderstood wee suppose

for his aleding hee chargeth Comicion uppon comicion the accoumpt is uisable and that [s<sup>d</sup> Error] will esely be mannefest but Jn<sup>o</sup> harris we suppos is as good Anacowmpt tent as himself

Lastly for his giueing his Judgment about the power of Juries In finding a nonsute although the bench doe not: tis the first time that euer wee heard such a thing asserted and at present doe not beleiue it. but leaue it to the honored court home it Consens: thus hoping this honored court will find that the apellant had no wrong neyther by the worshipfull m<sup>r</sup> Tyng nor by the honored County Courte vnto home he apeled as hee ses hee had

I subscribe y<sup>r</sup> honours most humble seruent

Elizebeth Harris

The Court of Assistants confirmed the former judgments and found for Harris 14s and 24s 4d costs. Records of the Court of Assistants, i. 28.]

DAFFORN ag<sup>t</sup> HOLOWELL

John Dafforne plaint. ag<sup>t</sup> William Holowell Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. January. 20<sup>th</sup> 1674. The plaint. withdrew his action.

RUSSELL &<sup>a</sup> ag<sup>t</sup> SMITH

Thomas Russell & John Dafforne plaint<sup>s</sup> ag<sup>t</sup> John Smith Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. January 20<sup>th</sup> 1674. The plaint. withdrew his action.

BISHOP ag<sup>t</sup> GOULD

Nathaniel Bishop of Boston assigne of Thomas Bishop of Ipswich plaint. ag<sup>t</sup> Ensigne John Gould of Topsfeild Defend<sup>t</sup> The plaint. withdrew his action upon the Defend<sup>ts</sup> confessing Judgement.

BRIGGS ag<sup>t</sup> COOKE

Abraham Briggs plaint. ag<sup>t</sup> Robert Cooke Hornbreaker Defend<sup>t</sup> in an action of debt of twelve pounds Sixteen Shillings in mony due by bill & due interest & due damages according to Attachm<sup>t</sup> Dat. Novemb<sup>r</sup> 17<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. two pounds Sixteen Shillings according to bill & costs of Court, allowed by the Court twenty two Shillings. 10<sup>d</sup>.

PEARSON ag<sup>t</sup> HILTON

George Pearson plaint. ag<sup>t</sup> William Hilton & Charles Hilton Defend<sup>ts</sup> in an action of debt for Forty pound due to him as by a bill or writeing under their hands doth appeare upon the accompt of their Father m<sup>r</sup> Edward Hilton late of Exeter deceased & for all due damages according to Attachm<sup>t</sup> Dat. 4<sup>th</sup> Decemb<sup>r</sup> 1674. . . . The Jury . . . founde for the plaint. Forty pounds according to bill & costs of Court, allowed by the Court, twenty nine Shillings & two pence.

Execucion issued June 23<sup>o</sup> 1675.

SHEAFE ag<sup>t</sup> ATKINSON

Sampson Sheafe plaint. ag<sup>t</sup> Theodore Atkinson jun<sup>r</sup> Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. January: 12<sup>th</sup> 1674. The plaint. withdrew his Action.

BRATTLE ag<sup>t</sup> HOARE

Thomas Brattle plaint. ag<sup>t</sup> Daniel Hoare Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Novemb<sup>r</sup> 25: 1674. The plaint. withdrew his Accion.

FOGG ag<sup>t</sup> JOY

Ezekiel Fogg plaint. ag<sup>t</sup> Thomas Joy Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. x<sup>br</sup> 15<sup>o</sup> 1674. The plaint. in failure of giving Summons was NonSuted.

FOGG ag<sup>t</sup> WILLIAMS

Ezekiel Fogg & Company plaint<sup>s</sup> ag<sup>t</sup> John Williams Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Decemb<sup>r</sup> 3<sup>o</sup> 1674. The plaint. in failure of power or consent from the Company was NonSuted & costs granted the Defend<sup>t</sup> Six Shillings & four pence.

[See note to third case below. This was a part of the interminable litigation about the Lynn Iron Works.]

THO: EDSALL ag<sup>t</sup> PAGE

Thomas Edsall Turner plaint. ag<sup>t</sup> Edward Page Canmaker Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. January 18<sup>th</sup> 1674. The plaint. withdrew his action. [292]

RAWSON ag<sup>t</sup> BILLING

William Rawson who married Anne the daughter of m<sup>r</sup> Nathaniel Glover deceased plaint. ag<sup>t</sup> Roger Billing senio<sup>r</sup> Defend<sup>t</sup> in an action of the case for refusing to deliver & give possession to the saide William Rawson his third part of that Fourth part of the Farme whereon the s<sup>d</sup> Billing now Liveth; as also refusing to pay him his part of Rent due according to proportion since the Late m<sup>rs</sup> Anne Glover deceased the Relict of the s<sup>d</sup> m<sup>r</sup> John Glover (w<sup>ch</sup> Land was given by the Last Will & Testament of the s<sup>d</sup> m<sup>r</sup> John Glover deceased equally to bee devided amongst Four of his Sonns & theire heires forever; whereof the s<sup>d</sup> William Rawsons Father in Law m<sup>r</sup> Nathaniel Glover deceased was one of them & all just & due damages according to Attachm<sup>t</sup> Dat. January 20<sup>th</sup> 1674. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court, allowed by the Court nine Shillings & two pence. The plaint. appealed from this Judgem<sup>t</sup> to the next Court of Assistants & the s<sup>d</sup> William Rawson principall in Five pounds

& John Noyse & Paul Batt as Sureties in 50<sup>s</sup> apeice acknowledged themselves respectiely bound to . . . prosecute his appeale. . . .

[ Another case respecting the Glover property; cf. Rawson v. Glover, p. 472, above.

S. F. 1350.6

Will<sup>m</sup> Rowson his reasons of Appeall from the vardict of y<sup>e</sup> Jury & Judgm<sup>t</sup> of y<sup>e</sup> last County Court in Boston in y<sup>e</sup> Case where in he was plantife in right of Ann his wife & Rodger Billings Defendant Humbly tendered to this Hon<sup>d</sup> Court of Assistants for his Releiu

first — because y<sup>e</sup> Jury at y<sup>e</sup> last County Court notwithstanding his Compleant Exprest in his Attachm<sup>t</sup> and his farther manifestation of his Indubitate right and interest as own of y<sup>e</sup> heirs of y<sup>e</sup> late M<sup>r</sup> Nathaniel Glouer sonn to y<sup>e</sup> late Worshipfull John Glouer in and to y<sup>e</sup> farm that Rodger Billings now posseseth with [In]trest in y<sup>e</sup> rent and preuelledges there of Cep<sup>t</sup> and detained from him by y<sup>e</sup> sd Rodger Billings without showing or making it out that he had Any right or Leagall pouer deriued to him from one or Another yet y<sup>e</sup> Jury found Ags<sup>t</sup> him there fore hee Appealed in hope and not doubting of his Just releif for if Any person May Keepe Another out of his Just right without shewing Any ground why he doath soe then y<sup>e</sup> Appeallant Conseaus noeman Can long injoy his owne: vnles his sword be longer then his soe detaining

2ly — That not withstanding y<sup>e</sup> Appeallants plain demonstration that his Hon<sup>d</sup> Grandfather y<sup>e</sup> late m<sup>r</sup> John Glouer by his last will & testament Leagally prooued in y<sup>e</sup> Ho<sup>d</sup> County Court whearin hee giues all his Esteat boath reall and parsonall after his funerall discharged and An[d] eLeuen hunderd pounds Legacies giuen to his sonns to M<sup>r</sup> Thomas Glouer 140 pounds to M<sup>r</sup> Habakkuck Glouer 100 pounds & after his wifs deseas 200 pound[s] Apeece to M<sup>r</sup> John & M<sup>r</sup> Pelathia Glouer and sum other small Legassies which he Accom<sup>p</sup>d as his Depts becaues he had promised them for other Depts hee had none, left all to his worthey beloued wife & relick<sup>t</sup> Leaueing too larg farms one that y<sup>e</sup> defendant posseseth Largly stock<sup>t</sup> that yealeted with y<sup>e</sup> stock and Corn in & on it to y<sup>e</sup> Vallow of 428 pounds 16<sup>s</sup> 100 pounds parrannum Another good farm Little inferior to y<sup>e</sup> formmer with A good stock Vpon it to y<sup>e</sup> Vallow of 154 pounds 15<sup>s</sup> 4<sup>d</sup> that yealeted 30 pound[s] parrannum with all his Depts & Moueables to her duaring her life and to paye his Depts & Legassis his Depts owed hime Amounting to 600 pounds 17<sup>s</sup> 5<sup>d</sup> his Leather shoos hids Corn in his hous at hom & other moueables Amounting to 1219 pounds 4<sup>s</sup> 6<sup>d</sup> and though hee Ecknowledgeth his Hon<sup>d</sup> Grandmother was A prudant frugall & pious gentle woman as he haith heard and partly knoweth as Most in y<sup>e</sup> town did (Liued spearingly & beneath herself yet Liueing with his onnckle Habakkuck & his onnckele John Liueing in y<sup>e</sup> hous with her to y<sup>e</sup> Amazmen<sup>t</sup> of him self & all that hear of it y<sup>e</sup> stock of boath farms Corn & all y<sup>e</sup> y<sup>e</sup> hides & other Moueables with one of y<sup>e</sup> farms sould and all Made Away and not as yet Known by whom or hou [ ] and all Amicable tenders and Endeuer[ ] to obtain his Just part of y<sup>e</sup> farm left yet Kept out of it Vnder pretenc of Depts to be paid though neuer yet Any brought in to the inuentary by his Hon<sup>d</sup> & pjous Grandmother who [best] Knew Depts if Any had been, and tooke her Sollom oath that it was A true inuentari of her husbands Estate & when shee Knew More Shee would discover it; and Liueing About 15 years After neuer



discouered Any; the Appeallant hopes none of his vncles within y<sup>e</sup> Least Call her fidelity and good Contianc into question; and had there been Any Depts y<sup>e</sup> will of M<sup>r</sup> John Glouer prescribes y<sup>e</sup> way hou they shall be paid. namely out of his Depts & Moueabls & not otherwise which Depts and Moueabls as to inuentary Amounted to 2400 pounds when y<sup>e</sup> Depts oed by him Came but to 1100 pounds and Lands intajled Known not Liable to pay Depts till y<sup>e</sup> whoall 2400 pounds paid out or Com short as y<sup>ey</sup> did not and what Appears not is not, beside y<sup>e</sup> Defendants owned in Couart & soe did his vncle M<sup>r</sup> John Glouer that y<sup>e</sup> Appeallant was an heire in part & yet y<sup>e</sup> Jury found Against him for all which he Appeals & hopes & dought not in y<sup>e</sup> least but by y<sup>e</sup> Justis of this Hon<sup>d</sup> Court & Jury to haue his Just releefe soe leueing him self & Caues to y<sup>e</sup> wisdom of god and this Hon<sup>d</sup> Court for A Just determination hear in subscribing himself

Yo<sup>r</sup> Hon<sup>s</sup> Humble saruant

William Rawson

Boston the 24 of february 1674

These reasons were received Feb<sup>ro</sup> 25<sup>th</sup> 1674

per Is<sup>a</sup> Addington Cler

[Endorsed:]

W<sup>m</sup> Rawsons Reasons of Appeale ag<sup>t</sup> Roger Billing

S. F. 1350.5

Hudson Leveret as he is Attorney to Roger Billings: his ansuer to m<sup>r</sup> William Rawson reasons of appeale

To the furst I answer that where as the plantif maketh Such a stue about the farmes and Estate of his Grandfathers, it is well enough known and appeareth by the will that m<sup>rs</sup> Glover was late executrix and [torn] [had] power in herselfe to dispose of all in her life time, and did dispose of most of the moveable estate while she liued, and a great deale of them went to pay debts and much she lost many waies and it is like she disposed of Sum amongst her Children and it is thought most to her Son m<sup>r</sup> Nathaniell Glover for he had a great part of y<sup>e</sup> drye hides which by the Inventory amounted to a great Sum. besides many Scores of bushells of Corne and many other things of Considerable vallue whereof there is good testimonny and what m<sup>rs</sup> Glover left her Son m<sup>r</sup> John Glover hath administration granted him as by record may appeare, and from him the sd John Glover [der]iues his right as tennant to the farme. But yet if m<sup>rs</sup> Ann Glover had not disposed of the Moveable estate but had left it with m<sup>r</sup> John & m<sup>r</sup> pellathiah Glover (which she never did yet the[re]) would be 400 pounds for the foresayd Jn<sup>o</sup> and pelletiah to receaue after there Mothers death and that by the will not out of y<sup>e</sup> other goods in the Inventorye, but out of the two farmes before there be any division without any preiudice to the two hundred pound they should haue receaued before there mothers death, yet they receaued nothing of it in that time

In the Second place whereas m<sup>r</sup> Rawson doth not onely intimate but affermeth y<sup>t</sup> there is estate nough besides the farmes to pay all Legasyes and debts, yet it is not soe though m<sup>r</sup> Rawson afferme it and wee doe not at all beleue that the Court will take it for granted because m<sup>r</sup> Rawson sayes it is Soe, for that we vtterlye denie but if m<sup>r</sup> Rawson can find it the administrator is willing it shall goe as far as it can towards payeing of the debts and legasyes. yet notwithstanding there is Soe much estate in m<sup>r</sup> John Glovers Inventorye. m<sup>r</sup> John and m<sup>r</sup> pellathia

never had it nor the disposal of it, neither did they receaue anything of the 200 pound in there mothers life time and as for the estate in m<sup>rs</sup> Glover inventorye it is but a heape of lumber and old household stuff and Soe much worne that one can not well use it any longer and the greatest part of it is debts where of there is nothing receaued and is doubtfull what wi[ll] euer [g]et receaued of it, and therefore doth nothing to the payeing of debts or legacy[es]

In the therd place as for the rent of the farme it hath don but little sence there Mothers death neither haue they receaued as yet one hundred pound, by reason that necessarye reparations and buildings haue taken vp Soe much rent further More wheras m<sup>r</sup> Rawson sayth that Goodman Buillings shoeth no write he hath to detainee the farm from him I answer if m<sup>r</sup> John and m<sup>r</sup> pelletiah are by the will to receaue the[re] legasyes out of the farme before m<sup>r</sup> Rawson or any else haue the[re] shares in any division, then They haue righte to detainee the farme from him, But if they *[torn]* besides are to receaue any legasyes or debts before m<sup>r</sup> Rawson haue his share (the[n]) I Confess I doe not conseaue it to be right to detainee the farme from him. And whe[n] m<sup>r</sup> Rawson Sayth that m<sup>rs</sup> Glover lived with her Son m<sup>r</sup> Habbucuk it is not Soe for they liued a Sunder euer Sence m<sup>r</sup> Glouers death and it was n[ot] m<sup>r</sup> Habbucuk nor m<sup>r</sup> John Glover that wrought vpon there Mother to Sell the farme for they in themselues were avers to it but there mother petendeing sh[e] hat great debts to pay in England and that she could not tell how to pay them without selling that farme, for that reason they thought themselues bound in duty to there Mother to yeald vp there rights by Signeing that deed of Sale that Soe there mother might haue Some Spetiye to pay the[r]e old England debts with, and doubtless it was intended by there fathers will soe. and Maio<sup>r</sup> Atherton was then there mother cheifest counsellor and did adviss and Counsell her to Sell that farme that Soe she might inabled to pay Some old England debts

Lastly whereas the plantiff sayth that his vncle John owned him to be and heire, vncle John vtterly dissonned it, but how euer that will not make him to be and heire, if he be not and heire. and if the farme be intayled as the plantiff doth grant and Say it is (then according to y<sup>e</sup> Custome of old England) then the Eldest son m<sup>r</sup> Nathaniell Glover must be heire, and it can not rationally thought to be the mind of him that gaue It by will that it should be devided equally among all the children for euer for then in short time it would come to Soe many divisions that it would be worth nothing to any of them there[fore] I can not See how he will proove himselfe and heire Soe not at all doubtteing but this honored Court of assistance and th<sup>e</sup> gentlemen of the urye will see iust Cause for the Confermeing of the iust and right iudgm<sup>t</sup> of the late County Court Soe I rest and Subscribe my Self you<sup>r</sup> obedient

Servant and faithfull Subject

Hudson: Leverett

The Court of Assistants (Records, i. 26) confirmed the former judgment. But see pp. 656-60, below.]

LEVERETT ag<sup>t</sup> FOGG

Hudson Leverett assignee of John Giffard plaint. ags<sup>t</sup> Ezekiel Fogg Skinner Defend<sup>t</sup> in an action of the case for non performance

of the condition of an Obligation on a bond of Ninety pounds good & Lawfull mony of England, as under the hand & Seale of saide Fogg may appeare, bearing date the 21<sup>th</sup> day of June. 1673. & all due damages according to Attachm<sup>t</sup> Dat: 9<sup>br</sup> 25<sup>th</sup> 1674. . . . The Jury . . . founde for the plaint. Ninety pounds good & Lawfull mony of England according to bond & costs of Court: Vpon request of the Defend<sup>t</sup> the Magistrates chancered this bond to Forty Four pounds Fifteen Shillings & seven pence good & Lawful mony of England, and costs of Court, allow<sup>d</sup> by the Court thirty two Shillings & 8<sup>d</sup>

Execucion issued Aprill: 10<sup>th</sup> 1675.

[Fogg's picturesquely worded petition from jail, and the continuation of this case will be found under Fogg v. Williams a year later, below, p. 656.]

#### LONG ag<sup>t</sup> PAUL

Joseph Long plaint. ag<sup>t</sup> Samuel Paul Defend<sup>t</sup> in an action of the case for withholding & refusing to give possession of a peice of Land lying in the great Lotts in Dorchester of about three acres more or Less of Upland & Meadow, bounded upon Enoch Wiswall Southward or Southeast; on the land of Sam<sup>ll</sup> Rigby northward & on the Mill Creeke eastward & is part of the great Lott of Joseph Long his Father & now the just right [ 293 ] & proper inheritance of the plaint. these w<sup>th</sup> all other due damages according to Attachm<sup>t</sup> Dat. Janu-ary 20<sup>th</sup> 1674. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court, allow<sup>d</sup> by the Court Fifty Five Shillings eight pence.

#### m<sup>r</sup> OXENBRIDGE &<sup>a</sup> ag<sup>t</sup> RICE

M<sup>r</sup> John Oxenbridge, m<sup>r</sup> James Allen, m<sup>r</sup> Anthony Stoddard & m<sup>r</sup> Humphry Davie Trustees & Executors to the last Will and Testament of Richard Bellingham deceased plaint<sup>s</sup> ag<sup>t</sup> Nicholas Rice of Reding Defend<sup>t</sup> in an action of debt for non paiment of Forty pounds for two yeares Rent for a Farme at Winnisimmet payable in March. 1673. 1674. w<sup>th</sup> all due damages according to Attachm<sup>t</sup> Dat. Decembr 1<sup>o</sup> 1674. . . . The Jury . . . founde for the plaint<sup>s</sup> Forty pounds of w<sup>ch</sup> Five pounds to bee paide in Silver & costs of Court, allow<sup>d</sup> by the Court, thirty six Shillings & four pence; Joseph Belknapp & m<sup>r</sup> Richard Wharton as Attournys & in behalfe of the Defend<sup>t</sup>

appealed from this Judgem<sup>t</sup> unto the next Court of Assistants & themselves as principalls in Eighty pounds & m<sup>r</sup> Jn<sup>o</sup> Saffin & Tho: More as Sureties in 40<sup>li</sup> apeice, acknowledged themselves respectiuey bound to . . . prosecute their appeale . . .

[Another Governor Bellingham's will case. Cf. Records of Court of Assistants, i. 24.]

#### HUDSON ag<sup>t</sup> SMITH

Cap<sup>t</sup> William Hudson plaint. ag<sup>t</sup> Elizabeth Smith Widdow & Relict of Francis Smith sometime of Boston deceased) Defend<sup>t</sup> according to Attachm<sup>t</sup> Dat. Janur<sup>o</sup> 19<sup>o</sup> 1674. This Accion is continued, by order of Court untill the next Court of this County.

[See below, p. 592 for the continuance.]

#### LEGG ag<sup>t</sup> CURTIS

Daniel Legg plaint. ag<sup>t</sup> Ephraim Curtis of Sudberry Defend<sup>t</sup> in an action of the case for withholding a parcell of goods left in his hands at Nevis by the s<sup>d</sup> Daniel Legg & all due damages according to Attachm<sup>t</sup> Dat. Decemb<sup>r</sup> 24<sup>th</sup> 1674. . . . The Jury . . . founde for the Defend<sup>t</sup> costs of Court, allowed by the Court, twenty Shillings 6<sup>d</sup> [294]

#### GREENLIFE TAPPEN & PEMERTON Admonish't

Enoch Greenliffe jun<sup>r</sup> Joseph Tappen & Thomas Pemerton being all three bound over to this Court, to answer what they should bee charged with for affronting & violently thrusting of Abigail Taylor off from her horse on the roade between Boston & Roxbury; Vpon hearing of the case & receiving information under the hand of s<sup>d</sup> Abigail Taylor, wherein Shee doth acknowledge herselfe Satisfied & acquits them from any demand of damage The Court admonish<sup>d</sup> them ordered them to pay Fees of Court & soe discharged them.

#### JOSEPH Indian NESQUIN Sentenced

Joseph Indian Nesquin convict in Court by his own confession of breaking up the house of John Tucker in Hingham in the night after nine a clock & drincking & spoyling his Sider valued at six Shillings: The Court Sentenced him to bee branded in the Forehead with the



Letter. B. & to pay unto the s<sup>d</sup> Jn<sup>o</sup> Tucker Eighteen Shillings in mony & unto John Prince Constable of Hingham twenty Four Shillings in mony for his charges & Fees of Court & prison, & in case hee pay not the same that hee bee sold to Barbados for a Servant standing committed untill the Sentence bee performed.

### Grandjury dismiss't

The Grandjury brought in theire bill of presentm<sup>ts</sup> Janur<sup>o</sup> 27<sup>o</sup> & were dismissed for this Court.

### GOULD to BISHOP

John Gould of Topsfeild acknowledged a Judgem<sup>t</sup> against himselfe & Estate to Nathaniel Bishop of Boston as assigne of Tho: Bishop for thirty one pounds ten Shillings in mony according to bond bearing date Octob<sup>r</sup> 3<sup>d</sup> 1674.

Execucion issued March: 11: 1674.

### WOODBIDGE & WEAVER<sup>rs</sup> bond for Arbitracion

Thomas Woodbridge & John Weaver came into Court & declared that they had agreed to refer all matters of difference whatsoever that are depending between them unto the issue & award of the Hono<sup>rd</sup> John Leverett Esq<sup>r</sup> Gov<sup>r</sup> m<sup>r</sup> Peter Lidget & m<sup>r</sup> Thomas Deane as Arbitrato<sup>rs</sup> & all former Awards to bee voide & did oblige themselves each unto the other in the Summe of One thousand pounds mony to stand to & abide by the Award of the aforesaide three Arbitrato<sup>rs</sup> or any two of them, being given in to the saide partys or either of them under theire hands & Seales on or before the 10<sup>th</sup> of February next ensuing the Hono<sup>rd</sup> Govern<sup>r</sup> being to appoint time & place of meeting & the s<sup>d</sup> partys doe oblige themselves to attend time & place according to the appointment of the Gov<sup>r</sup> & then & there to declare theire severall cases. Entred Janur<sup>o</sup> 28 1674.

### THEODORA OXENBRIDGE her Guardian

Theodora Oxenbridge appeared in Court & made choise of m<sup>r</sup> Humphry Davie to bee her Guardian, which hee accepted & the Court approved of; provided hee give in bond according to Law.

## MARTHA MINOT her Guardian

Martha Minott daughter of the Late John Minot made choise of m<sup>r</sup> Arthur Mason as her Guardian w<sup>ch</sup> the Court approved of hee accepting thereof & giving in bond according to Law. [295]

## Division of BLAGUES Estate

This Indenture made the twenty Eight day of January in the yeare of o<sup>r</sup> Lord One thousand Six hundred Seventy & Four: Between Elizabeth Blague Relict of Henry Blague late of Boston in the County of Suffolke in New-England Brickmaker deceased on the first part, Phillip Blague of Boston afores<sup>d</sup> Brickmaker on the second part, Nathaniel Blague of Boston afores<sup>d</sup> Brickmaker of Boston afores<sup>d</sup> Brickmaker on the third part: Eliatha Blague of Boston afores<sup>d</sup> Brickmaker on the Fourth part, Joseph Blague of Boston aforesaide on the Fifth part, Elizabeth Wheeler of Boston aforesaide Widdow on the Sixth part & Martha Blague of Boston aforesaide Spinster on the Seventh part, all of them Children of the abouenamed Henry Blague deceased & Elizabeth Blague party to these pu<sup>r</sup>sents. Witnesseth, that whereas the abouenamed Henry Blague in the yeare of our Lord: 1662 dyed intestate & the Countie Court for Suffolke aforesaide granted Letters of Administracion upon the Estate of the saide Henry unto the saide Elizabeth Blague Relict of the saide Henry: And whereas the saide Children of the saide Henry & Elizabeth are now grown up: And the saide Administratrix being desirous that all the saide Children should now have the full of their respective portions paide & delivered to them out of the saide Estate & that Shee the s<sup>d</sup> Elizabeth as Administratrix might bee discharged therefrom: Each of the s<sup>d</sup> partys for him & her selfe respectiue, & for each of their respective heires Executo<sup>rs</sup> & administrato<sup>rs</sup> doe Covenant promiss & grant to & with the other their heires Executo<sup>rs</sup> administrato<sup>rs</sup> & assignes in manner & forme following (that is to Say).

Jmp<sup>rs</sup> that the saide Phillip Blague his heires Executo<sup>rs</sup> administrato<sup>rs</sup> & assignes shall & may by force & vertue of these pu<sup>r</sup>sents from time to time & at all times for ever hereafter have hold possess & enjoy as his & their proper Estate of inheritance in Fee simple & in full of his portion from the saide Estate, one Brickhouse situate

and being in Boston adjoining to the Street that Leades from the water mill towards Century haven; & also the Land whereupon the saide house doth stand, & a parcell of Land adjoining thereunto being butted & bounded South East by the aforesaide Street, Southwest by the Land of Nathaniel Blague, Northwest by the Mill pond, North East by the Land of Richard Collicot & measureth at the Front or saide Street Seventy nine foote & an halfe, & at the reare Seventy foote; with all profits priviledges & appurtenances that doe shall or may belong or appertaine to the same or any part thereof.

Jtem, that the saide Nathaniel Blague his heires Executo<sup>rs</sup> administrators & assignes shall & may by force & vertue of these pu<sup>r</sup>sents from time to time & at all times for ever hereafter Lawfully peaceably & quietly have hold possess & enjoy as his & their proper Estate of inheritance in fee simple & in full of his portion from the s<sup>d</sup> Estate, one moiety or halfe part of the now dwelling house of the saide Elizabeth Blague. (Viz) the Northeast part thereof; which saide house is scituate towards the Northerly end of the s<sup>d</sup> town of Boston & containing one Cellar one Low roome one Chamber & one garrat; with halfe the Chimnys in the s<sup>d</sup> house, with the free use pu<sup>r</sup>viledge & benefit of the Entry & Stares in the s<sup>d</sup> house, with free Liberty of ingress egress & regress to & from the same; with all the Land whereupon the saide part of the [296] saide house & Chimnys doe stand, & all the Land that lyeth betwixt the saide part of the saide house & the Street; & also all that peice or parcell of Land that Lyeth at or adjoineth to the North East end of the saide house & is bounded at the Front or Southeast end by the saide Street, and Southwest partly by the end of the saide house & partly by the Land that lyeth betwixt the saide part of the saide house & the Street & partly by the Land of the s<sup>d</sup> Elizabeth Blague ranging down in a direct Line from the saide Street by the North East end of the saide house to the Northerly corner of Phillip Squires Land, Northwesterly by the Mill pond & Northeasterly by the Land of Phillip Blague & measureth at the Front Sixty & Six Foote & at the reare Seventy Foote Together with all profits priviledges Easements & appurtenances that doe shall or may appertaine or in any wise belong to the same or any part or parcell thereof.

Jtem, that the s<sup>d</sup> Eliatha Blague his heires Executo<sup>rs</sup> administrators & assignes shall & may by force & vertue of these pu<sup>r</sup>sents from

time to time & at all times for ever hereafter quietly & peaceably have hold possess & enjoy as his & their proper Estate of inheritance in Fee simple & in full of his portion from the saide Estate, all that messuage or dwelling house that is scituate & standing in Boston & adjoining to the Street that Leades from the second meeting house towards Century haven; with all the Land whereupon the saide house doth stand, together with the free use benefit & purviledge of the well that is in the Land that belongs to the s<sup>d</sup> Estate there: as also the free use of a passage of five foote in breadth that Leads from the saide Street by the South East side of the s<sup>d</sup> dwelling house into that Land that belongs now to the s<sup>d</sup> Estate (which s<sup>d</sup> passage is to lye in common to all that are or hereafter shalbee proprietors of the s<sup>d</sup> Land) Together with a peice of Land adjoining to the Southwest end of the s<sup>d</sup> dwelling house; which measureth from the Southwest end of the s<sup>d</sup> house twenty five Foote in a direct Line; & is bounded on the Northwest side by the Land of James English & on the South East side by the aforesaide passage or alley; & also all profits purviledges Easements & appurtenances that doe shall or may appertaine or in any wise belong to the same or any part thereof.

Item, that the s<sup>d</sup> Elizabeth Blague, her heires Executors administrators & assignes shall & may by force & vertue of these presents from time to time & at all times for ever hereafter quietly & peaceably have hold possess & enjoy as her & their proper Estate of inheritance in Fee Simple, one moiety or that halfe part of the house wherein Shee now dwells, together with all the Land that appertaines to the same bounded on the Northeast by the Land of Nathaniel Blague, Southwest by the Land of Phillip Squire. And also all that peece or parcell of Land which is bounded on the North by the saide Street that Leads from the second meeting house in Boston toward Century haven & Southerly by the Land of Ephraim Hunt, Easterly by the Land of William Norton & westerly partly by the aforementioned passage or Alley & partly by the Land of James English; together with the free use & purviledge of the aforesaide passage & well & all other profits purviledges & appurtenances that doe shall or may belong to the saide parcells of Land or houseing or either or any of them, or any part of them or either of them.

Item, that the s<sup>d</sup> Elizabeth Blague her heires Executors administrators or assigns or some of them shall pay or cause to bee paid unto



the abouenamed Joseph Blague his Executo<sup>rs</sup> or assigns the full & intire Summe of thirty pounds of Lawfull mony of New-England at such time when the s<sup>d</sup> Joseph shall attaine the full age of twenty one yeares; w<sup>ch</sup> saide Summe hee hereby accepts of as the full of his portion from the s<sup>d</sup> Estate. [297]

Jtem, that the s<sup>d</sup> Elizabeth Blague her heires Executo<sup>rs</sup> administrato<sup>rs</sup> or assigns or some of them shall pay or cause to bee paid unto the abouenamed Elizabeth Wheeler her Executo<sup>rs</sup> or assigns the full Summe of thirty pounds of Lawfull mony of New-England within the space of Six monthes next after due demand made of the same; which s<sup>d</sup> Summe the s<sup>d</sup> Elizabeth Wheeler doth hereby Engage to accept as the full of her portion & of all other demands from the s<sup>d</sup> Estate.

Jtem, that the s<sup>d</sup> Elizabeth Blague her heires Executo<sup>rs</sup> administrato<sup>rs</sup> or assigns or some of them shall & will pay or cause to bee paid unto the abouenamed Martha Blague her Executo<sup>rs</sup> or assigns the full & just Summe of thirty pounds of Lawfull mony of New-England within the space of six months next after due demand made of the same; which s<sup>d</sup> Summe the s<sup>d</sup> Martha Blague doth hereby Engage to accept in full of her portion & all other demands from the saide Estate.

In Witness whereof the partys abouenamed have hereunto Set their hands and Seales the day & yeare first aboue written.

Signed Sealed & delivered by the  
abouename Elizabeth Blague  
Phillip Blague, Nathaniel Blague  
Eliatha Blague, Elizabeth Wheeler,  
Martha Blague & Elizabeth Blague as  
guardian to the abouenamed Joseph  
Blague in the pu<sup>r</sup>sence of us.

Andrew Newcombe  
John Hayward scr.

Elizabeth Blague & a Seal.  
her // marke  
Philip Blague & a Seal.  
Nathaniel Blague & a Seal.  
Eliatha Blague & a Seal.  
Elizabeth Blague guardian  
to Joseph Blague her //  
marke & a Seal  
Elizabeth Wheeler her //  
marke & a Seal  
Martha M Blague  
her marke  
& a Seal.

Joseph Blague appeared in Court & made choise of his Mother

Elizabeth Blague to bee his Guardian which Shee accepted & the Court approved of: And all the persons Subscribing appearing at the same time & acknowledging theire hands & Seales & this Instrument to bee theire act & Deed The Court declared theire approbacion thereof & ordered it to bee Recorded in the Court Booke.

January 29<sup>o</sup> 1674 @

as Attests Js<sup>a</sup> Addington Cler

#### WHEELERS Receipt

Received this. 30<sup>th</sup> of January: 167 $\frac{1}{2}$  of my mother Elizabeth Blague of Boston in New-England Widdow the Summe of thirty pounds in currant mony of New-England; which is the full due of my portion from the Estate of my Father Henry Blague deceased. I say Rec: by mee.

Witness

the marke // of Elizabeth Wheeler

the marke // of Phillip Squire

Nath: Blague

Elizabeth Wheeler acknowledged the abouewritten to bee her act & Deed Feb. 3<sup>th</sup> 1674. before

Edward Tyng Assist. [298]

#### SAM<sup>li</sup> & STEPHEN MINOTS guardians

The Court appoints Ensigne Richard Hall of Dorchester to bee guardian to Samuel Minot & Daniel Preston Sen<sup>r</sup> to bee guardian to Stephen Minot, being both of them Sonns of the Late John Minot of Dorchester deceased untill they come of age to choose for themselves.

#### NORMAN Sent<sup>a</sup>

Thomas Norman being bound over to this Court to answer for speaking reproachfully & contemptuously of the Governo<sup>r</sup> Saying that old blue beard would stand by him or words to that purpose (which words blue beard relateing to the Governo<sup>r</sup>) hee doth not deny; & being called to answer for the same: The Court (upon the hearing of the case & what himselfe acknowledged therein) doe Sentence him to bee whip't with ten Stripes or to pay Five pounds in mony as a fine to the County according to Law standing committed untill the Sentence bee performed.

#### HARRIS Fin<sup>d</sup> 5<sup>li</sup> 2: 6 Respited

Joanna Harris being presented by the Grandjury for Selling of ale at three pence a quart without Licence & being called to answer

for the same, Owned the presentment: The Court Sentenced her to pay Five pounds in mony as a fine to the County according to Law & Fees of Court Standing committed untill the Sentence bee performed. Vpon her petition The Court respited her fine till farther Order.

COZENS Fin<sup>d</sup> 5<sup>li</sup> 2: 6.

The wife of Jsaac Cozens being presented by the Grandjury for selling of Ale at three pence a quart without Licence & being called to answer for the same, Owned the presentm<sup>t</sup> The Court Sentenced her to pay Five pounds in mony as a fine to the County according to Law & Fees of Court, standing committed untill the Sentence bee performed.

HEMAWAY Sentenc<sup>d</sup>

Ruth Hemaway convict by her own confession in Court, of committing Fornication & having a bastard Childe; which Shee brought<sup>t</sup> into Court & charged Edward Peggy both in the time of her travail & upon her Oath in Court to bee the Father thereof: The Court Sentenced her to bee severely whip't with twenty Stripes & to pay Fees of Court Standing committed untill the Sentence bee performed.

PEGGY Sentenced

Edward Peggy being bound over to this Court to answer for his committing Fornication with Ruth Hemaway Shee having an illegitimate Childe & constantly affirming hee was the Father thereof both in the time of her travail & making Oath thereof in Court: The Court declareth the s<sup>d</sup> Peggy to bee the reputed Father according to Law of the Childe Lately born of the body of the saide Ruth Hemaway & Sentenced the s<sup>d</sup> Peggy to pay two Shillings & Six pence per weeke in money towards the maintenance of the saide Childe from the time of its birth till the Court take farther order & to pay charges of prosecution & Fees of Court standing committed untill hee give Security for the performance of this Sentence. [299]

FRANCIS Sentenc<sup>d</sup>

Richard Francis being committed to prison till this Court to answer for his disposing & making sale of Caleb Bleasse for Five yeares unto Matthew Edwards of Redding in a way of deceit & cozenage, hee

having noe power soe to doe, for whome hee received of saide Edwards Seven pounds in mony: Vpon a full hearing of the case & due consideracion thereof The Court Sentenc<sup>d</sup> the s<sup>d</sup> Francis to bee whip't with twenty Stripes or to pay Five pound in mony as a Fine to the County & to pay unto Caleb Bleasse Fourteen pounds in mony paying Fees of Court & prison standing committed untill the Sentence bee performed.

DAN<sup>ll</sup> TURILL jun<sup>r</sup> Fin<sup>d</sup> 5<sup>li</sup>

Daniel Turill jun<sup>r</sup> being presented by the Grandjury for taking away an Attachm<sup>t</sup> from the Marshalls Deputy after it was served upon John Turill whereby the Law was obstructed & the persons concerned damnified: The presentment being called the s<sup>d</sup> Turill appeared, and Vpon hearing of the Evidences & proofes in the case & consideracion of the same, The Court Sentenced the s<sup>d</sup> Daniel Turill to pay Five pounds in mony as a fine to the County & charges of prosecution & Fees of Court standing committed untill the Sentence bee performed

Attachm<sup>t</sup> Ordered ag<sup>t</sup> NORTHY &<sup>a</sup>

John Northy & his wife & William Chamberlain jun<sup>r</sup> of Hull making default in appearance to answer their presentment according to Summons The Court ordered an Attachm<sup>t</sup> to issue forth for them ag<sup>t</sup> next Court of this County

HALL & his wife Fined 5<sup>li</sup>

Ephraim Hall & Sarah Rand (now his wife) convict by their own confession in Court of committing Fornication before marriage: The Court Sentenced them to bee whip't: i. e. the s<sup>d</sup> Ephraim w<sup>th</sup> Fifteen Stripes & the s<sup>d</sup> Sarah with ten Stripes or to pay Five pound in mony as a fine to the County & Fees of Court standing committed untill the Sentence bee performed.

CARR Sentenced

Thomas Carr convict by his own confession in Court of committing two burglaries upon two severall Sabbath dayes: Viz: in breaking into the dwelling house of m<sup>rs</sup> Elizabeth Powning upon one Sabbath day & taking from her a considerable Summe of mony She affirmeth to value of Six pound; & in breaking into the dwelling house of Mary



Lyndon upon the next Sabbath & taking from her a considerable Summe of mony, Shee affirmeth to value of thirteen pound Five Shillings seven pence: Vpon consideracion hereof The Court Sentenced the s<sup>d</sup> Carr to bee branded in the Forehead with the Letter B & to have one of his eares cut off & to pay treble damages to the persons from whome hee stole & in case hee make not payment that hee bee sold to make Satisfaction & to pay Fees of Court & prison standing committed untill the Sentence bee performed.

LUCATH GRAFTON & MORRICE Sentenc<sup>d</sup>

Henry Lucath Servant to m<sup>r</sup> Tho: Brattle, W<sup>m</sup> Grafton Servant to Thaddeus Macarty being committed to prison for stealing severall goods from their s<sup>d</sup> Masters. & Edmund Fitz Morrice Living w<sup>th</sup> one Humphrys for being a receiver & disposing of the goods by them Stol'n: Vpon hearing of what themselves acknowledged [300] & what was proved in the case The Court Sentenced them to bee whip't with Fifteen Stripes apeice & to pay treble damages to the partys from whome they stole, each of them to pay his proportion or third part thereof: Viz: to m<sup>r</sup> Tho: Brattle Eighteen pound three Shillings, to m<sup>r</sup> MacKarty to m<sup>rs</sup> Hanna Savage Fifteen Shillings, paying Fees of Court & prison standing committed untill the Sentence bee performed.

[ Order about FOGG ]

The Court desires & appoints Cap<sup>t</sup> Edward Hutchinson to prosecute & implead Ezekiel Fogg for his severall misdemeano<sup>rs</sup> for which hee stands bound over to this Court.

Adjournment

The Court adjourned from Saturday 30<sup>th</sup> of January to Feb<sup>ro</sup> the 4<sup>th</sup> being thursday at nine a clock.

---

February 4<sup>th</sup> 1674 @

The Court met according to Adjournment.

SAM: BRIDGHAMS Guardian

Samuel Bridgham appeared in Court & made choise of Jonathan Bridgham his brother to bee his Guardian which hee accepted & the Court approved of; hee giving in bond according to Law.

## HAWKINS Sentenced

Mary Hawkins convict in Court of bold whorish carriages & having a bastard Childe & impudent & pernicious Lying: The Court Sentenced her to bee whip't at a Carts tayle up from the dwelling house of John Hall in Boston formerly Ezekiel Foggs Lodging into the Town round about the Town house & soe to the prison with twenty five Stripes severely. & within one month following to bee whip't again severely with twenty Five stripes, paying Fees of Court & prison standing committed untill this Sentence bee performed.

[S. F. 26634]

To y<sup>e</sup> hon<sup>rd</sup> Court of Assistants now siting at Boston

The humble petition of Mary Hawkins Humbly sheweth

That where as yo<sup>r</sup> pore petitioner hath through her very great sin & wickednes many ways agriuated, brought herselfe vnder the iust sentence of y<sup>e</sup> Countie Court, one part of w<sup>ch</sup> hath bene already inflicted vpon me & though I can not but owne y<sup>t</sup> I deserue not onely y<sup>e</sup> other part to be inflicted, but by reason of my sin being so agreuated as It was, neuer to haue any countenans or fauour [showne] to me either from god or [man] yet considering gods wonderfull mercy to humble peniten [sinners] (though very hainous) calls vpon them to turne from the[re] wickednes & liue, & y<sup>t</sup> y<sup>e</sup> same spirit of Compashon he works in his people, imboldens me humbly to Supplicate yo<sup>r</sup> hon<sup>rs</sup> y<sup>t</sup> you wil be pleased to remitt y<sup>t</sup> other part of y<sup>e</sup> punishment y<sup>t</sup> is not yet inflicted, desiring y<sup>e</sup> lord to worke still more & more in my soule a greater sence of my sin & giue me truely to repent & turne to him & to loath my selfe & sin w<sup>ch</sup> I hope in [some] weaker measure I doe, thus leauing my condition in y<sup>e</sup> lords & yo<sup>r</sup> hands praying for yo<sup>r</sup> hon<sup>rs</sup> I subscribe myselfe

yo<sup>r</sup> Hon<sup>rs</sup> pore afflicted prisoner

mary hokahans

In Ans<sup>r</sup> to this peticon this Court Judgeth it meet w<sup>th</sup> the Consent of the [County] Court to Grant hir request & Remitts hir second punishment ordering the keep<sup>r</sup> of the prison to Dissmiss hir from y<sup>e</sup> prison & set hir at liberty

past E R S ]

## FOGG Fined

Ezekiel Fogg convict in Court of wanton Lascivious & obscene carriages with Mary Hawkins, the saide Mary now having a bastard Childe; the saide Fogg since the discovery of her being with Childe having encouraged her escape & endeavoured to conveigh her from the hands of Justice: The Court Sentenced him to pay ten pounds in mony as a fine to the County & remit the Forfiture of his bond for non appearance to ten pounds in mony more & to pay Fees of Court standing committed untill the Sentence bee performed.

## JEFFERY'S Guardian

John Jeffery Sonn of Gregory Jeffery Late of cape porpus deceased made choise of John Lux his Father in Law to bee his Guardian which hee accepted & the Court allowed of, vpon his giving in Security according to Law; which hee hath accordingly done.

## SKELTON purged by Oath

John Skelton of Dedham accused by Tom an Jndian & his Squaw for Selling them six quarts of Sider purged himselfe by his Oath that neither hee nor his wife to his knowledge sold any Sider to the saide Jndian or his Squaw for mony or otherwise. [ 301 ]

## TOM Jndian Sentenced

Tom an Jndian being committed to prison for his abusive carriage in the house of John Skelton of Dedham in threatning his wife & Fighting with one of their Neighbours whome they called in to their assistance. The Court Sentenced him to bee whip't with twenty Stripes & to pay Fees of Court & prison standing committed untill the Sentence bee performed.

LORIN Fined 5<sup>l</sup>

John Lorin convict by his own confession in Court of making Loue to & engaging the affections of Mary Willis daughter in Law to John Man without her parents consent & after his being forewarned by them. The Court Sentenced him to give bond to the Treasuro<sup>r</sup> of the County of Suffolke for the payment of Five pounds in mony according to Law within Four monthes next following standing committed untill the Sentence bee performed.

Order ab<sup>t</sup> STANBERRY & HARRIS's mony

Thomas Stanberry & Thomas Harris Butchers having a parcell of mony of theirs Seized at Dedham by Cap<sup>t</sup> Daniel Fisher as being exporting it out of the Colony; which mony was brought & deliue<sup>rd</sup> in to the Court; but upon hearing of the case it not being proved that they were carrying it out of the Colony The Court ordered their mony to bee deliue<sup>rd</sup> them again.

## SNELLINGS Licence

Vpon certificate presented to this Court under the hands of severall persons of the benefit they have received by William Snelling in his

administring of Physick: The Court doe allow & Licence the saide Snelling to practice physick.

The Court adjourned from thursday Feb<sup>ry</sup> 4<sup>th</sup> unto thursday Feb<sup>ry</sup> 11<sup>o</sup> at nine a clock.

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Present

SIMON BRADSTREET Esq<sup>r</sup>

EDW: TYNG Esq<sup>r</sup>

February 5<sup>th</sup> 167 $\frac{4}{5}$

POTTER to TUCKER

personally appeared Richard Potter & acknowledged a Judgement against himselfe & Estate unto John Tucker for Forty Shillings mony 2:0:0

as Attests. Js<sup>a</sup> Addington Cler

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February 11<sup>th</sup> 167 $\frac{4}{5}$  @

The Court met according to Adjournm<sup>t</sup>

Order to y<sup>e</sup> Treas<sup>r</sup>

The Court orders the County Treasuro<sup>r</sup> to pay the charges of the meeting of Majo<sup>r</sup> Tho: Clarke & the military officers of Boston about dividing the Companys which they expended at Cap<sup>t</sup> Hudsons.

MORPHEY Sentenc<sup>d</sup>

Bryan Morphey convict in Court by seu<sup>r</sup>all Evidences of Stealing a paire of cloth breeches from William Toldervy valued at Sixteen Shillings. [302] The Court Sentenced the saide Morphey to pay unto the s<sup>d</sup> Toldervay Forty eight Shillings in mony being that threefold restitution the Law requires & to pay Fees of Court & prison standing committed untill the Sentence bee performed.

Order ab<sup>t</sup> CORNISH

Hudson Leverett subAttourney to William Merrit Attourney of Thomas Taylor of Newyorke Feltmaker complaining to this Court that Thomas Cornish Servant to saide Taylor by Jndenture had absented himselfe from his Service & through threats & durance in the time of the Late Government of the place by the Dutch had obtained a discharge from his saide Master: Vpon hearing of what was presented by both partys & what was certified by the Worpp<sup>11</sup>



Matthias Nicolls Maior of the s<sup>d</sup> place, The Court doe order that the saide Cornish with the first oppertunity bee returned unto his saide Master & in the meane time bee Secured & the s<sup>d</sup> Thomas Cornish principall in £:25 & Robert Orchard as Surety in £.25. acknowledged themselves jointly & severally bound to the Treasuro<sup>r</sup> of the County of Suffolke on condicion that the saide Cornish should bee forth comming when demanded by authority in order to his being returned unto his saide Master.

COAKE admonish't

John Coake convict by his own confession in Court of breach & prophanation of the Sabbath in continuing drincking at the house of Christopher Crow in the afternoon of the Sabbath. The Court Sentenced him to bee admonish't & to pay Fees of Court & prison standing committed untill the Sentence bee performed.

EARLE admonish't

Francis Earle convict as aboues<sup>d</sup> The Court Sentenced him to bee admonish't & to pay fees of Court & prison standing committed untill the Sentence bee performed.

Order ab<sup>t</sup> HAWKINS prison charges

In Answer to the petition of Thomas Matson prison keeper of Boston: The Court orders the County Treasuro<sup>r</sup> to pay the Keeper of the prison his charges in keeping of Mary Hawkins now a prisoner to bee paide according to Law.

This Court dissolved February 11<sup>th</sup> 167<sup>4</sup>/<sub>8</sub>

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Present

JOHN LEVERETT Esq<sup>r</sup> Gov<sup>r</sup>

EDWARD TYNG Esq<sup>r</sup> Assist

February 16<sup>th</sup> 167<sup>4</sup>/<sub>8</sub>

CURVEATH to SANDYS

personally appeared Ezekiel Curveath & acknowledged a Judgment against himselfe & Estate unto John Sandys for Ninety three pounds thirteen Shillings in mony being the full ballance of Acco<sup>t</sup> on file.

as Attests Js<sup>a</sup> Addington Cler

Execucion issued Feb<sup>ry</sup> 18<sup>o</sup> 167<sup>4</sup>/<sub>8</sub> [303]

Present

SIMON BRADSTREET Esq<sup>r</sup> AssistEDWARD TYNG Esq<sup>r</sup> AssistMarch 27<sup>o</sup> 1675

DINELY to LEGG

Personally appeared Fathergon Dinely & acknowledged a Judgment against himselfe & Estate unto Samuel Legg of Boston Marrin<sup>r</sup> for one hundred pounds currant mony of New-England according to bill Dat. June pr<sup>o</sup> 1673. Left on file; to bee paide unto the s<sup>d</sup> Legg or to John Sandys as his Lawfull Attourney.

as Attests. Js<sup>a</sup> Addington Cler

Execucion issued March 30 1675.

Arbitrato<sup>rs</sup> Return in HOLOWAY & DAFFORNES case

Whereas there was an action commenced by William Holloway & Stephen Butler against John Dafforne according to Attachm<sup>t</sup> Dated January 1674 & the plaintiffes withdrew their Action upon agreement of a reference of the case to the Honorable John Leverett Edward Tyng Majo<sup>r</sup> Thomas Clarke Esq<sup>rs</sup> & the Selectmen of Boston bindeing themselves each to other in the pœnalty of two hundred pounds to stand to & abide the award & determination of the aforementioned parties or the Majo<sup>r</sup> part of them Vpon the hearing of the pleas & allegations of both parties in the case by us whose names are subscribed, wee doe Award that William Holoway & Stephen Butler shalbee at the charge to set up the Fence which they pulled down along m<sup>r</sup> Daffornes Land in the same place where it was according to their agreement before the Selectmen w<sup>th</sup> Richard Woody & the s<sup>d</sup> Dafforne to enjoy that Line as the boundary between the s<sup>d</sup> partys & this wee Award as o<sup>r</sup> finall determination in this case, witness o<sup>r</sup> hands this 24<sup>th</sup> of Aprill 1675.

John Leverett

Hezekiah Vsher Senio<sup>r</sup>

Edward Tyng

Tho: Brattle

Tho: Clarke

John Joyliffe

W<sup>m</sup> Davis

John Lake

Tho: Lake

James Oliver

Recorded & compared Aprill: 24: 1675 @ Js<sup>a</sup> Addington Cler  
vide. 287. [304]

#956



















